
employee benefits/ investment management lawflash

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DOL Sends Proposed Conflict of Interest Rule to OMB for Review

The White House backs a “fiduciary rule” for IRAs.

The U.S. Department of Labor (DOL) has sent its proposed “Conflict of Interest Rule-Investment Advice” to the president’s Office of Management and Budget (OMB) for review. This proposal reflects the DOL’s promise to repropose its withdrawn 2010 proposed rule on the definition of a “fiduciary” for purposes of the Employee Retirement Income Security Act (ERISA) standards of fiduciary conduct and the prohibited transaction rules under ERISA and section 4975 of the Internal Revenue Code (the Code). OMB received the proposal on February 23, and its review is ordinarily the last step before a proposal is published in the *Federal Register*. Typically, OMB’s review takes between 60 and 90 days, although the review time may vary depending on the particular rule and other issues.

The White House has shown strong support for the rule, which it has said will “better align . . . the rules between employer-based retirement savings plans and IRAs.”

At this time, few details are available about the proposed rule, and so it is difficult to provide any analysis of what the rule may mean for firms that provide services to ERISA-covered plans, IRAs, and other plans and accounts subject to the Code’s prohibited transaction rules. But, based on the DOL’s statements, one of the changes we expect from the original proposed rule is the addition of several proposed prohibited-transaction exemptions intended to address the effects of expanded fiduciary status under the ERISA’s and the Code’s prohibited transaction rules. Further, the DOL has said that the proposed rule will not cover employee stock ownership plan (ESOP) valuations and that it will allow financial advisers “to continue to provide general education on retirement saving.”

The DOL has indicated that the proposed rule will be open for public comment and that it will hold a public hearing on the rule’s provisions. We encourage those who will be affected by the rule to consider submitting comments to the DOL.

The DOL’s frequently asked questions on the rulemaking are available at <http://www.dol.gov/featured/ProtectYourSavings/faqs.htm>, and the White House’s fact sheet is available at <http://www.whitehouse.gov/the-press-office/2015/02/23/fact-sheet-middle-class-economics-strengthening-retirement-security-crac>.

As with the DOL’s original proposed rule, Morgan Lewis is closely following the repropose rule and will update you with any developments. Past LawFlashes that cover the original proposed rule are available at http://www.morganlewis.com/pubs/EB_LF_SignificantChangesStatusDefinition_1_01nov20101.pdf and <http://www.morganlewis.com/index.cfm/fuseaction/publication.detail/publicationID/a742828d-5ec9-49ce-b7be-96f4dbee20aa>.

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