

The New Labor Department Fiduciary Rules and IRA Rollovers

by Thomas J. Sigmund, JD

ABSTRACT

In April of 2016, the Department of Labor (DOL) finalized its long-awaited regulations relating to fiduciary advice about IRAs and qualified plans. With these regulations, the DOL expanded the world of fiduciary advice and in the process created an enforcement mechanism that did not previously exist. Arguably, these new rules have the greatest impact on IRAs and IRA rollovers. Although compliance with the new rules obligates Society of Financial Service Professionals (Society of FSP) members to increase the paperwork associated with their representation, asking the Society of FSP advisor to act in the best interest of his or her clients should not be viewed as a new requirement. These new rules may in fact enhance the business endeavors of the Society of FSP advisor.

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Introduction

President Barack Obama's administration implemented rules, regulations, and new laws to protect the welfare and retirement plan benefits and employment rights of U.S. taxpayers. Among the protections instituted or pursued by the government are the following:

- A. The Affordable Care Act
- B. Paid leaves of absence
- C. Minimum wage increases
- D. Section 408(b)(2) fee disclosure rules under the Employee Retirement and Security Act of 1974 (ERISA)
- E. Finalization of overtime rules promulgated in May of 2016
- F. Increased Department of Labor (DOL) scrutiny and audit activities for retirement plans

On February 9, 2016, the Obama administration sought a 64 percent increase in the budget for the Employee Benefits Security Administration for fiscal year 2017.

Although all of these initiatives are important, from the perspective of the financial services industry, none of these developments is more significant than the long-awaited fiduciary rules, applicable to qualified plans and IRAs, that were handed down by the DOL in April of last year.

The DOL's new fiduciary rules absolutely change the landscape of providing investment advice to

ERISA-covered retirement plans and non-ERISA plans, such as IRAs.¹ In addition to defining who is a fiduciary, the DOL's new rules also modify existing and create new prohibited transaction exemptions under ERISA and the Internal Revenue Code that apply when a fiduciary is compensated. More importantly, the new rules apply when the fiduciary's advice, directly or indirectly, affects the variable compensation the fiduciary receives. Although these new rules certainly affect ERISA plans, the changes made by these new rules are much more complex and much more dynamic for IRAs and IRA rollovers. The focus of this article is on the latter.²

Prohibited Transactions

The new rules revolve around the prohibited transaction provisions of the Internal Revenue Code and ERISA that apply to a person acting as a fiduciary to an IRA or qualified retirement plan.

The Internal Revenue Code (and ERISA as it relates to ERISA plans) prohibits certain activities and transactions involving a fiduciary and an IRA. A fiduciary cannot deal with the income or assets of a plan or IRA in his or her own interest, or for his or her own account, and cannot receive payments from third parties in connection with transactions involving the plan or IRA.³ These prohibitions impose on fiduciaries a duty not to act on conflicts of interest that may affect the fiduciary's best judgment. Accordingly, a fiduciary must not take into consideration fees paid to the fiduciary or to a person in which such fiduciary has an interest when determining what is in the investor's best interest. Further, receiving a commission on the sale of an insurance policy, annuity contract, or investment company securities (mutual funds) by a fiduciary that recommended the investment violates the prohibited transaction provisions of the Internal Revenue Code.

Unless there is an exemption from these prohibited transaction rules (see the "Prohibited Transaction Exemptions" section further on in this article), a fiduciary recommending a rollover may be subject to

an ongoing excise tax and/or repayment of compensation unless the transaction is unwound to put the investor and the IRA in the same position it enjoyed had the transaction not occurred.

Effective Date of New Rules

The effective date of these new rules is generally April 10, 2017. This balances the DOL's desire to halt the perceived continuing monetary harm to retirement investors while giving time to the affected financial service providers to adjust to the basic changes from nonfiduciary status to fiduciary status. However, certain requirements relating to the prohibited transaction exemptions do not come into effect until January 1, 2018. So, for example, during the period of April 10, 2017, to January 1, 2018, acknowledgement of fiduciary status and compliance with the impartial conduct standards are required, whereas the contractual requirements and the implementation of policies and procedures to be discussed below do not come into play until January 1, 2018.

The DOL's Game Plan

The DOL's mission is to protect, educate, and empower retirement investors as they face important choices in saving for retirement in their IRAs and employee benefit plans. The intent of the DOL is to protect consumers from the harmful effects of conflicts of interest. Without fiduciary standards, the DOL perceives that certain investment advisors can, without repercussion, put their bottom line compensation ahead of the client's retirement security, especially in the context of IRA rollovers.

The DOL has suggested that there may be \$2.4 trillion in rollovers between the years 2016 and 2020. With regard to mutual funds alone, the DOL has determined that conflicted advice results in underperformance by an average of 50 to 100 basis points, costing IRA investors between \$95 billion and \$189 billion over the next 10 years, or up to \$404 billion over the next 20 years.⁴ The DOL expects that the quantified gains to the investor resulting from

these new rules in just one segment of the market—IRA front-end load mutual funds—will be worth between \$33 billion and \$36 billion over 10 years and between \$66 billion and \$76 billion over 20 years.⁵ According to the DOL, additional large gains to IRA investors can be expected from eliminating conflicted advice with regard to all other financial products.⁶

In order to accomplish its objective of protecting IRAs, the DOL first needed to change its approach to defining who is a fiduciary investment advisor. Next, it needed to place conditions on existing and newly issued prohibited transaction exemptions to allow the investor to legally enforce any breach of duty by the fiduciary.

Under the previous rules, the DOL judged it possible for many investment advisors in a nonfiduciary capacity to advise an ERISA plan participant to roll over his or her retirement benefits to an IRA with little concern about whether the rollover was in the “best interest” of the client. In general, as long as the rollover and the recommended investments were “suitable” for the investor in question, the transaction could take place.⁷

Further, prior to the new regulations, even if the investment advisor in question was a fiduciary under the old rules, and even though the rollover recommended may have been a prohibited transaction under the Internal Revenue Code, the fact that the fiduciary did not act in the best interest of the investor and thus breached his or her fiduciary duty was not likely to be discovered or acted upon by anyone, including the DOL or the Internal Revenue Service. The DOL has no jurisdiction over IRAs, and the Internal Revenue Service is not likely to catch the breach.

To close this gap, the DOL modified and partially repealed existing prohibited transaction exemptions and instituted new prohibited transaction exemptions to create a contractual commitment by the investment advisor to act impartially and in the best interest of the plan participant when recommending the rollover and the IRA investments.

This plan of attack by the DOL was ingenious. In one stroke of the pen, the federal government

expanded the world of fiduciary advice and in the process created an enforcement mechanism (the plaintiff’s bar) that did not previously exist.

Who Is a Fiduciary under the New Rules?

Under ERISA and the Internal Revenue Code, a person is considered a fiduciary to the extent that the person engages in specified activities. The rendering of investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of an IRA is one of the specified activities.⁸

In 1975, the DOL issued regulations to narrow the scope of the statutory definition of fiduciary investment advice by creating a five-part test. Under the 1975 regulations, for advice to constitute “investment advice,” an advisor needed to render advice (1) as to the value of securities or other property, or make recommendations as to the advisability of investment in, purchasing or selling securities or other property (2) on a regular basis (3) pursuant to a mutual agreement, arrangement, or understanding with the plan or plan fiduciary (4) that served as a primary basis for investment decisions with respect to plan assets and (5) that was individualized based on the particular needs of the investor. Further, the regulations provided that an advisor is a fiduciary with respect to any particular instance of providing advice only if the advisor met each and every element of the five-part test with respect to the recipient of the advice.⁹

Under the 1975 regulations, unless an investment advisor was already a fiduciary to the qualified plan [for example, by contract as an ERISA 3(21) fiduciary or 3(28) fiduciary], his or her advice to a plan participant to roll over his or her benefits from the qualified plan to an IRA would not likely, standing alone, render the advisor a fiduciary. It was very easy for the investment advisor to establish that one of the five parts of the five-part test was not met. For example, if someone developed a new relationship with a qualified plan participant, it was very easy to establish that the advice was not performed on a regular basis or that the advice was not the primary basis for

the participant's decision to roll over the assets. In some cases, it would be easy to argue that the advice was not individualized.

Even before the new rules, establishing that the investment advisor is not a fiduciary was very important to the advisor in the context of IRA rollovers. In 2005, the DOL issued Advisory Opinion 2005-23A, whereby it broadly suggested that any rollover-related advice from an advisor who previously provided fiduciary advice to a qualified plan sponsor or plan participant could be considered a prohibited transaction. Therefore, if it could be established that the advisor did not act in a fiduciary capacity, he or she would be unaffected by this advisory opinion.¹⁰

With the new DOL fiduciary rule, the five-part test to define fiduciary investment advice has been eliminated. Now, an investment advisor will have provided fiduciary investment advice if he or she: (1) makes a recommendation as to the advisability of acquiring, holding, disposing of, or exchanging, securities or other investment property, or a recommendation as to how securities or other investment property should be invested after the securities or other investment property are rolled over, transferred, or distributed from a qualified retirement plan or IRA; or (2) makes a recommendation as to the management of securities or other investment property including, among other things, recommendations on investment policies or strategies, portfolio composition, selection of other persons to provide investment advice or investment management services; recommendations about selection of investment account arrangements (e.g., brokerage versus advisory); and recommendations with respect to rollovers, transfers, or distributions from a qualified retirement plan or IRA, including whether, in what amount, what form, and to what destination such a rollover, transfer, or distribution should be made.¹¹ If this investment advice is given in return for compensation (direct or indirect) and this advice is provided to a specific recipient regarding the advisability of a particular investment or management decision with respect to the

securities or other investment property of the qualified plan or IRA, then the advisor is a fiduciary.

According to the DOL, a recommendation is made when the advice would be viewed by the recipient as a suggestion to engage or refrain from engaging in a particular course of action. The new rules specifically identify certain activities in which advisors can engage without making such a recommendation including, but not limited to, providing general investment communications that a reasonable person would not view as investment advice (e.g., newsletters, general marketing materials, and general market data) and providing investment education.¹²

Prohibited Transaction Exemptions

Prohibited Transaction Exemption 84-24

Before the new DOL regulations, prohibited transaction exemption 84-24 (PTE 84-24) was heavily relied on by fiduciaries to avoid prohibited transactions. PTE 84-24 provided an exemption for the receipt of compensation received by the investment advisor for any recommendation to purchase insurance, annuities, or mutual funds by an IRA.¹³ PTE 84-24 applied to fixed-rate annuity contracts, indexed annuities, and investment company securities (mutual funds). It did not, however, apply to variable annuities, in that variable annuities were considered securities.

The new DOL regulations amend and partially revoke PTE 84-24. First of all, as it relates to IRAs, PTE 84-24 now applies only to fixed-rate annuities. Further, the exemption now requires that the investment advisor adhere to "impartial conduct standards," including acting in the best interest of the IRA owner when providing advice. Acting in the best interest of the IRA owner means that the advisor acts:

with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, finan-

cial circumstances and needs of the Plan or IRA, without regard to the financial or other interests of the fiduciary, any affiliate or other party.¹⁴

In addition, the investment advisor must not make misleading statements, must make certain disclosures, and must comply with recordkeeping requirements to rely on this exemption. In particular, the investment advisor must make a determination that the rollover recommended was, in fact, in the best interest of the qualified plan participant. This determination must be in a contemporaneous record, maintained for 6 years, and disclosed upon request to the DOL, the Internal Revenue Service, and the investor. It should be noted that unlike the best interest contract exemption (BICE) described below, there is no requirement under this exemption that the parties contractually commit to the impartial conduct standards. However, the requirement that compensation be reasonable is retained in the amended exemption.

A fixed-rate annuity contract is defined as a fixed annuity contract issued by an insurance company that is either an immediate annuity contract or deferred annuity contract that (1) satisfies applicable state standard nonforfeiture laws at the time of issue; or (2) in the case of a group fixed annuity, guarantees return of principal net of reasonable compensation and provides a guaranteed declared minimum interest rate in accordance with the rate specified in the standard nonforfeiture laws in the state that are applicable to individual annuities. In either case, the annual benefits cannot vary, in part or in whole, based on the investment experience of a separate account or accounts maintained by the insurer or the investment experience of an index or investment model.¹⁵ Accordingly, a fixed-rate annuity contract as stated above does not include a variable annuity or indexed annuity or similar annuity.

The BICE

In light of the limited application of PTE 84-24, the DOL also issued the BICE. The DOL stated that the BICE was issued to ensure that retirement inves-

tors receive advice that is in their best interest while also allowing advisors to continue receiving commission-based compensation, 12b-1 fees, and revenue-sharing payments.¹⁶ Put differently, the BICE will allow a fiduciary to provide investment advice that results in the recommendation to invest in a broad array of investments, notwithstanding that the compensation to the advisor may vary or be affected by the recommendation made.

The [BICE] permits firms to continue to rely on many current compensation and fee practices, as long as they meet specific conditions intended to insure that the financial institutions mitigate conflicts of interest and that they, and their individual advisers, provide investment advice that is in the best interests of their customers.¹⁷

Specifically, in order to align the advisor's interest with those of the plan or IRA customers, the exemption requires the financial institution to acknowledge fiduciary status for itself and its advisors. The financial institution's advisors must adhere to basic standards of impartial conduct, including giving prudent advice that is in the customer's best interest, avoiding making misleading statements, and receiving no more than reasonable compensation. Further, the financial institution must refrain from giving or using incentives for advisors to act contrary to the customer's best interest. All of these commitments must be set forth in a written contract that generally must be put into effect prior to any investment being made. (This contractual requirement is not effective until January 1, 2018.) The financial institution also must have policies and procedures designed to mitigate harmful impacts of conflicts of interest and must disclose basic information about their conflicts of interest and the cost of their advice.

Two provisions in financial advisor-customer contracts are specifically addressed. One is that the BICE prohibits the institution/investment advisor from precluding class actions. The second is that the BICE allows for limited arbitration of claims.

The DOL issued a streamlined BICE for

level-fee fiduciaries. A financial institution and advisor are level-fee fiduciaries if the only fee received by the financial institution, the advisor, and any affiliate in connection with advisory or investment management services to the IRA assets is a level fee that is disclosed in advance to the investor. A level fee is a fee or compensation that is provided on the basis of a fixed percentage of the value of the assets or a set fee that does not vary with the particular investment recommended, rather than a commission or other transaction-based fee.¹⁸

With level-fee fiduciaries, there is no contract requirement, no warranties relating to impartial conduct, no disclosure requirements, no Web- and transaction-based disclosures, and no disclosures to the DOL required. Rather, the level-fee fiduciary must simply provide a written statement of fiduciary status and must adhere to impartial conduct standards. Further, the level-fee fiduciary must document the specific reason or reasons why a rollover and level fees are in the best interest of the investor considering the investor's alternatives and taking into consideration fees, expenses, and levels of service.

As previously stated, compliance with the BICE is necessary to avoid a prohibited transaction and any associated excise tax. In order to comply with the BICE, the advisors and financial institutions must agree to adhere to the impartial conduct standards established by the exemption and agree in writing to do so. Thus, for IRAs and IRA rollovers, if advisors and financial institutions do not adhere to the standards established by the exemption, the IRA holder may hold them accountable through a breach of contract claim.

Doing what is prudent and in the best interest of the investor with respect to an IRA and IRA rollovers is no small task. However, advisors should be able to prove they have acted in their client's best interest by documenting their use of a reasonable process and adherence to professional standards in deciding to make the rollover recommendation, and by documenting their compliance with the financial institution's policies and procedures required by the BICE.

From all appearances, the DOL will be satisfied if these processes are in place. The question that remains, however, is whether the investor with the assistance of plaintiff's counsel will seek recourse for the rollover decision notwithstanding that the process was in place. The considerations and analysis that go into a decision on whether to roll over monies from a qualified retirement plan to an IRA will be further discussed below.

Rollover Considerations

With the new fiduciary rules and their focus on rollover decisions, it is imperative that the investment advisor explain the options to the investor. Many issues come into play when determining whether to roll over monies from a qualified retirement plan to an IRA.

First, the investment advisor needs to determine whether the distribution can be rolled over. The qualified retirement plan terms and provisions and the character of the distributions must be analyzed before rollover eligibility can be assessed. For example, required minimum distributions, hardship distributions, and distributions payable to a nonspouse beneficiary cannot be rolled over.

Once it is determined that a rollover is available, then the determination of whether a rollover should be made comes into play. The fiduciary must assess (1) whether it would be best to leave the money in the employer-sponsored retirement plan in light of investment options and fees, (2) whether it would be best to take a taxable lump-sum or partial distribution of the benefits, or (3) whether the participant should roll over the distributions to the qualified plan of his or her new employer, if applicable.

Issues such as flexibility, withdrawal restrictions, excise taxes on distributions, creditor protection, investment opportunities (including the ability to purchase life insurance), and minimum distribution requirements must be evaluated. For example, ERISA protects qualified retirement plan benefits from creditor claims. However, applicable state law may not give the same protection to IRAs, and in

this regard there may be a distinction between protection for the owner as opposed to the beneficiaries of inherited IRAs. The benefits of taking a lump-sum distribution need to be understood and considered. This might include 10-year averaging or the favorable tax treatment of unrealized appreciation.

The flexibility of an IRA when it comes to estate planning, account splitting, disclaimers, and investment options is another relevant factor for consideration. An IRA will likely accommodate the splitting-up of the account into separate IRAs for the respective beneficiaries. An IRA beneficiary designation can address the impact of disclaimers, and the stated impact of disclaimers will likely be accepted by the IRA custodian. Splitting up a qualified retirement plan account or dealing with disclaimers for qualified retirement plan accounts may not be possible or may be more difficult to accomplish. Self-directed IRAs may make it possible for the owner to direct investment of the assets into nontraditional investments that may not be available in a qualified retirement plan context.

Once it is determined that an IRA rollover is the “best” option, then the investment advisor needs to assess whether the rollover should be to a traditional IRA or, perhaps, to a Roth IRA or a combination thereof. Traditional IRA versus Roth IRA decisions are complex in and of themselves and are not covered in this article.

Finally, it is imperative that the rollover be effectuated correctly. If the money is distributed first to the plan participant, then the general rule is that the plan participant must roll over the monies to an IRA within 60 days of his or her receipt of the qualified plan distribution. With these transfers, withholding requirements need to be addressed. In this regard, a trustee-to-trustee transfer may be the better option.

An interesting question arises in the context of these new rules. The exemptions, including the BICE, require that the fiduciary act prudently and in the best interests of the investor. The institution and investment advisor must agree in writing to act in this

manner. Accordingly, if the investment advisor imprudently recommends a rollover, then the investor may have a contractual breach claim and seek damages under state law for the same. However, even though this standard of care and contractual requirement is part of the exemption to avoid the prohibited transaction, it is not likely that the Internal Revenue Service would seek an excise tax on the basis that it would have been better, for example, that the participant take a lump-sum distribution. Rather, it seems likely that the government’s focus will be on the process and a good-faith effort made by an educated advisor to make an appropriate determination. This begs the question of whether plaintiff’s bar will take a different view, as it is not bound by any finding by the government.

Preparing for the New Rules

Even though the new fiduciary rules are generally effective in April 2017, the full disclosure provisions, the policy and procedures, and the written contract requirements of the BICE do not go into effect until January 1, 2018. Between now and the effective date of these new regulations, there is much work to be done.

Financial institutions and advisors need to inventory their accounts and analyze the compensation arrangements as well as the investment choices to determine what changes, if any, need to be made. Written contract templates need to be created. Policies and procedures need to be established to ensure that the investment advisors act in the interest of the investors without regard to the compensation being received. Web sites need to be modified to comply with the disclosure requirements of the new exemptions. Commission-based fees and other variable compensation should be analyzed to determine whether it is still prudent and in the best interest of the investor. Even if level fee structures are to be implemented, a determination must be made whether the fees would be in the best interest of the investor.

Even asset-under-management fee structures should be scrutinized from the perspective of reasonableness. Explicit in all of these new requirements is

the requirement that compensation be reasonable, and that the expenses and structure of the compensation paid be in the best interest of the investor. Even level-fee fiduciaries would make more money if a rollover from a qualified plan is captured by an investment advisor who did not previously give compensated advice to the qualified plan. If there is minimal oversight and minimal investment activity, even level compensation could be unreasonable. Might it be more prudent to simply charge a retainer for services rendered? With a retainer structure, a rollover determination will not impact the advisor's compensation and therefore will not influence the recommendation being made by the advisor.

Conclusion

When an investment professional advises a client in connection with an IRA rollover, more likely than not the advisor will be serving in a fiduciary capacity. As a fiduciary, the advisor must act prudently and in the best interest of the investor, and receive no more than reasonable compensation for the advice. Although the new rules may require more paperwork and the implementation of a compliant process, all credentialed members of the Society of Financial Service Professionals (Society of FSP) and others who already act in the best interest of their customers should welcome these new rules with open arms. Society of FSP advisors have always had the duty (albeit not perhaps strictly required by law) to act in the best interest of their clients. Therefore, these new rules should not change the breadth, scope, or expertise of the services being rendered by the Society of FSP advisor.

Further, these rules will weed out of the industry those advisors who have not been acting (or do not have the ability to act) in the best interest of their clients. The investment of time and money made by the investment advisor to comply with the new rules will likely be recouped in multiples through the increased business that will be transferred over (voluntarily or involuntarily) by those in the industry who do not have the ability (or desire) to comply. Arguably, the

only change brought about by these new rules to Society of FSP members is the requirement that their commitment to their clients be put into writing and otherwise disclosed. So, with effective marketing efforts, these new rules should only enhance the business of the Society of FSP's educated members. ■

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(1) It should be noted that these rules apply to other non-ERISA accounts such as HSAs, Archer MSAs, and Coverdell accounts. However, the focus of this article is on IRAs and IRA rollovers.

(2) The rules differ for ERISA plans versus non-ERISA plans such as IRAs, including, but not limited to, the requirements and conditions of the prohibited transaction exemptions. This article discusses the rules and these exemptions as they apply to IRAs without comparing and contrasting the rules as they apply to ERISA plans. Therefore, readers should carefully discern the differences through their own reading and education.

(3) IRC Secs. 4975(c)(1)(E) and 4975(c)(1)(F).

(4) "FAQs: Conflicts of Interest Rulemaking," Department of Labor; accessed at: www.dol.gov/protectyoursavings/faqs.htm.

(5) *Ibid.*

(6) *Ibid.*

(7) FINRA Rule 2111 requires that firms and their associated persons "must have a reasonable basis to believe" that a transaction or investment strategy involving securities that they recommend is suitable for the customer. This reasonable belief must be based on the customer's investment profile, age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance. In FINRA regulatory Notice 12-25, p. 3 (2012), FINRA explains that "in interpreting FINRA's suitability rule, numerous cases explicitly state that 'a broker's recommendations must be consistent with the customer's best interests,'" and goes on to state that the suitability requirement "prohibits a broker from placing his or her interests ahead of a customer's interest." The Department of Labor chose not to adopt the FINRA suitability requirement because it does not do any of the following:

reference a best interest standard, clearly require brokers to put their client's interests ahead of their own, expressly

prohibit the selection of the least suitable (but more remunerative) of available investments, or require them to take the kind of measures to avoid or mitigate conflicts of interest that are required as a condition of these exemptions. 29 CFR, Part 2550, p. 58.

(8) ERISA Sec. 3(21)(A) and IRC Sec. 4975(e)(3).

(9) 29 CFR Parts 2509 and 2510.3-21 (1975).

(10) The Department of Labor's position in Advisory Opinion 2005-23A (December 7, 2005) was that it is not fiduciary advice to make a recommendation as to distribution options even if accompanied by a recommendation as to where the distribution would be invested.

(11) 29 CFR Parts 2510.3-21(a)(1).

(12) 29 CFR 2510.3-21(b)(1).

(13) It should be noted that the robo-advice or computer model exemptions are still in place to allow the receipt of variable compensation, provided that the advice is nondiscretionary and based

on a computer model such as mean variance optimization by Harry Markowitz. Further, other preexisting prohibited transaction exemptions that might apply to IRA investments have been modified primarily to incorporate the impartial conduct standards. This article will not go into the workings of the computer model exemptions and these other exemptions.

(14) 29 CFR Part 2550.

(15) 29 CFR Part 2550 Summary, p. 20.

(16) "Fact Sheet: Department of Labor Finalizes Rule to Address Conflicts of Interest in Retirement Advice, Saving Middle Class Families Billions of Dollars Every Year," U.S. Department of Labor, Employee Benefits Security Administration; accessed at: www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/dol-final-rule-to-address-conflicts-of-interest.

(17) *Ibid.*

(18) 29 CFR Part 2550.

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