Legal Update: Retirement Security Rule Updates Who Qualifies as an Investment Advice Fiduciary

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By Timothy "Tim" J.W. Muller on May 28, 2024

The new Retirement Security Rule marks a pivotal shift in the regulation of financial advice provided to retirement investors. This rule redefines who qualifies as an investment advice fiduciary under the Employee Retirement Income Security Act (ERISA), ensuring that financial advisers adhere to stringent standards of care and loyalty.

For clients of financial advisors, particularly those managing significant retirement savings, this rule has profound implications. It aims to protect investors from conflicts of interest and ensure they receive prudent, unbiased advice. Understanding these changes is crucial for anyone relying on financial advisors to secure their retirement future, as it enhances transparency, fairness, and accountability in the financial services industry.

What is the Retirement Security Rule?

On April 23, 2024, the U.S. Department of Labor (DOL) unveiled the Retirement Security Rule, a significant update defining who qualifies as an investment advice fiduciary under the Employee Retirement Income Security Act (ERISA). This rule, along with amendments to several prohibited transaction exemptions (PTEs), including PTE 2020-02, "Improving Investment Advice for Workers & Retirees," is set to take effect on September 23, 2024, with a one-year transition period for certain conditions.

The new rule aims to increase protections for retirement investors by ensuring that financial advisers adhere to high standards of care and loyalty when making investment recommendations.

5 Key Aspects of the Retirement Security Rule

The Retirement Security Rule addresses several critical areas to safeguard retirement investors. It mandates that trusted advisers must:

1. **Provide Prudent Advice**: Advisers are required to meet a professional standard of care when making investment recommendations.
2. **Act Loyally**: Advisers must never put their financial interests ahead of their client's interests.
3. **Avoid Misleading Statements**: Advisers must provide clear and truthful information about conflicts of interest, fees, and investments.
4. **Charge Reasonable Fees**: Fees for services must be fair and reasonable.

5. **Disclose Conflicts of Interest**: Advisers must inform clients about any potential conflicts of interest.

Addressing Modern Retirement Savings Realities

The new rule is a response to the significant changes in the retirement savings landscape since the original 1975 ERISA regulations. At that time, defined benefit pension plans, managed by professional money managers and funded by employers were common. Now, 401(k)s and IRAs are the primary vehicles for retirement savings. This places the burden of making investment decisions on the investor rather than financial professionals. As a result, this shift highlights the necessity of modernizing fiduciary standards to better protect retirement investors.

One of the most significant components of this rule is its initiative to close loopholes related to one-time investment advice. Under the 1975 rule, a financial services provider was only considered a fiduciary if they advised a client on a “regular basis” and under a “mutual agreement” that the advice would be the client’s primary basis for investment decisions.

This standard often excluded one-time advice, such as rolling over retirement assets into an IRA which could have a significant impact on a client’s future. This new rule ensures that financial recommendations like that are subject to fiduciary standards. This provides enhanced protection for investors.

Alignment with Broader Regulatory Efforts

This update from the Department of Labor aligns with the recent regulatory actions taken by the Securities and Exchange Commission (SEC) and state insurance laws. For example, the SEC’s 2019 “Regulation Best Interest” established an enhanced best interest standard for broker-dealers, ensuring that recommendations serve the best interests of retail customers. Similarly, more than 40 states have adopted updated conduct standards for insurance agents based on the National Association of Insurance Commissioners (NAIC) model regulation.

These updates reflect a comprehensive approach to protecting investors across financial products and services. The Department of Labor’s rule extends fiduciary standards to all retirement investment recommendations which promotes a uniform best interest standard in the marketplace.

Implications for Our Clients

At Rosen Hagood, we understand that these regulatory changes have profound implications for businesses and individuals involved in the financial services industry. Our expertise in securities law and business and commercial litigation uniquely positions us to navigate these complexities. Whether you need advice on compliance, face potential litigation, or want to understand how these changes impact your business, we are here to provide the support you need.

For more information on how these changes might affect you or your business, please contact our team at Rosen Hagood. We are committed to helping you navigate these regulatory landscapes with confidence and expertise.

