
Question: Can the DOL regulate advice on IRAs?

By Editorial Staff Thu, Apr 23, 2015

Last week, after almost five years of deliberation, the Department of Labor asserted its right to police the financial advice that individual IRA owners are given. What gives the agency that right, or that power?

A. Two ERISA attorneys, Fred Reish of Drinker, Biddle & Reath, and Steven Saxon of Groom Law Firm, told *RIJ* that the DOL has the authority to regulate IRAs.

“Under a Presidential Order from 1978, the DOL has the responsibility to define the prohibited rules under Section 4975 of the Internal Revenue Code. The DOL also has the right to grant exemptions from the 4975 prohibited transactions. Since IRAs are ‘plans’ for purposes of 4975, the DOL writes the prohibited transaction regulations and exemptions for IRAs,” Reish told *RIJ* in an email. Saxon wrote, “The DOL interprets 4975 as applied to IRAs and IRS imposes excise taxes.”

Both attorneys referred to the “Reorganization Plan No. 4 of 1978,” which the Carter administration intended to reduce redundancies in the regulation of retirement plans under the Employee Retirement Income Security Act of 1974 (ERISA). The plan states that “[The Department of] Labor will have statutory authority for fiduciary obligations. ERISA prohibits transactions in which self-interest or conflict of interest could occur, but allows certain exemptions from these prohibitions. Labor will be responsible for overseeing fiduciary conduct under these provisions.”

President Carter added at the end of Reorganization Plan No. 4:

“ERISA was an essential step in the protection of worker pension rights. Its administrative provisions, however, have resulted in bureaucratic confusion and have been justifiably criticized by employers and unions alike. The biggest problem has been overlapping jurisdictional authority. Under current ERISA provisions, the Departments of Treasury and Labor both have authority to issue regulations and decisions.

“This dual jurisdiction has delayed a good many important rulings and, more importantly, produced bureaucratic runarounds and burdensome reporting requirements. The new plan will significantly reduce these problems. In addition, both Departments are trying to cut red tape and paperwork, to eliminate unnecessary reporting requirements, and to streamline forms wherever possible.”

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