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WHEN THE GOVERNMENT SPEAKS: DOL REGULATORY INITIATIVES

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Last week I (Chris) had the good fortune to travel on Lisa's behalf to Baltimore to attend an annual meeting of benefits practitioners with government representatives from the DoL and IRS national offices. It served as a great opportunity to hear what guidance may be in the pipeline and what enforcement issues are catching the government's attention. Plan sponsors should take heed because those items getting the government's regulatory or enforcement attention tend to (1) be very common and (2) serve as a good compliance check. Over the next week or so, we'll cover what they said and what you should be looking for coming down the pike. First up: the Department of Labor's regulatory agenda. Based on statements from DoL officials:

- No additional guidance is planned on the ERISA 408(b)(2) service provider fee disclosures at this time. They talked with many service providers and felt that, in general, where there was ambiguity, the providers made reasonable interpretations.
- Regarding the reproposal of the definition of "fiduciary," they are looking to draw a bright-line distinction between investment education (non-fiduciary) and investment advice (fiduciary). They may also include a prohibited transaction exemption for individuals who accidentally cross the line.
- On lifetime income options in DC plans, there are three areas of focus:
    - Showing the income stream the participant's account balance could generate (this will likely be the first area on which guidance will be issued).
    - Including education about retirement planning (e.g., whether to select an annuity).
    - Guidance for plan administrators on selecting annuity providers.
- For target date funds, they said they hope to have a final rule on required disclosures in November. They also are hoping to release tips for plan sponsors on selecting TDFs.

- Finally, on the advisory opinion front, they are considering whether to release an advisory opinion on whether so-called "ERISA Accounts" or "ERISA Budgets" are considered plan assets and how they should be handled. These are accounts that contain rebates of revenue sharing and other fees from mutual funds and have been a regulatory gray area ever since they first appeared on scene. (The DoL representative also alluded to an opinion on the clearing of swaps under Dodd-Frank, which has already been released.)

As with all statements by government representatives, the statements are informal and non-binding, and thus cannot be relied upon as binding. However, in the absence of any other information, the DoL's comments should give plan sponsors some idea of the developments they can expect to see from the DoL in the weeks and months to come.

MEET THE TEAM

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