Robin Solomon Quoted in Investment News on DOL Fiduciary Rule Enforcement

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How Will the DOL Enforce Its Fiduciary Rule?

By Greg Iacurci

The enforcement impact will be most pronounced in the retail market, experts said, because individual retirement account owners will essentially become the army through which the Department of Labor wields indirect enforcement influence. "The DOL is shifting the enforcement burden from the government to the individual," said Robin Solomon, partner in law firm Ivins, Phillips & Barker's employee benefits practice. The Labor Department isn't the government agency with enforcement jurisdiction over IRAs. That responsibility falls to the Internal Revenue Service, which enforces prohibited transactions on the part of advisers through excise taxes.

There isn't a consensus definition of what a "best interest" standard means in concrete terms. "It's an improvement over the old suitability standard, but we don't know how the best interest standard will be interpreted by the courts," according to Ms. Solomon.

The 401(k) market is already well-versed in class-action litigation suing for fiduciary breach under ERISA has been one of the main methods of recourse for plan participants over the past decade. Further, the DOL has the authority to file civil actions against advisers for fiduciary breach in the ERISA-plan market, and the IRS is able to assess an excise tax on the adviser.

From an enforcement standpoint, not much will change in the 401(k) market as a result of the fiduciary rule. However, there will be more advisers falling under a fiduciary standard of care, and therefore more intermediaries to oversee on the part of the DOL and the IRS, according to Ms. Solomon

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