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Talking Through the DOL’s Proposed Prohibited Transaction Exemption, Episode 4: Litigation Risks

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On June 29, the Department of Labor (DOL) issued a proposed prohibited transaction exemption (PTE), filling the void left when the Fifth Circuit vacated the Obama-era 2016 DOL regulation in 2018. While the proposed rule is ostensibly an administrative rulemaking on which the DOL seeks public comment, it also does a lot more. In this podcast episode, Faegre Drinker’s Jim Jorden and Brad Campbell analyze the litigation issues related to this new interpretation — particularly as it pertains to the sale of annuities and other insurance products.

Jim and Brad provide context, insight and actionable advice for stakeholders on the following questions (and more) related to the proposed PTE.

- Given the recent overturn of DOL’s Obama-era “fiduciary” rule, could litigation overturn the new interpretation of fiduciary conduct (in particular, that rollover recommendations constitute fiduciary advice) laid out in the prelude to the PTE? Why might that be unlikely to happen?
- Under this new interpretation, what conduct might the DOL or a plan participant challenge as a breach of fiduciary duty and a prohibited transaction? How might you defend such a challenge?
- Rollover recommendations now implicate both fiduciary conduct issues and the new rules defined by this proposed prohibited transaction. How can we make sense of this complex dynamic?
- How might litigation based on alleged fiduciary conduct differ from that which might arise from the best interest standards applied to traditional insurance or securities sales?

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