



ED SLOTT'S IRA ADVISOR

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TAX & ESTATE PLANNING FOR YOUR RETIREMENT SAVINGS

Special Issue

What Advisors Need to Know About the New Fiduciary Rule

Section 4975 of the Tax Code, *Tax on Prohibited Transactions*, outlines various transactions that may not be engaged in with respect to certain tax-favored accounts, including IRAs, qualified plans and even Health Savings Accounts (HSAs). Specifically, section 4975(c)(1)(E) prohibits a fiduciary from dealing with the income or assets of a plan or IRA in his own interest or his own account. Similarly, 4975(c)(1)(F) prohibits a fiduciary from receiving any consideration for his own account from any party dealing with the plan or IRA in connection with a transaction involving assets of the plan or IRA. Together, these two sections place stringent compensation restrictions on anyone deemed to be a fiduciary.

Prior to the Department of Labor's new Fiduciary Rule, however, many financial professionals were not considered fiduciaries with respect to the accounts that they served. Thus, 4975(c)(1)(E) and 4975(c)(1)(F), which both specifically reference fiduciaries, failed to apply in many instances. As a result,

certain revenue-generating transactions that would be impermissible if an advisor was classified as a fiduciary were often acceptable under the "old" rules. With the introduction of the new Fiduciary Rule, however, that changes. Now, far more financial professionals will be considered fiduciaries with respect to clients' IRAs, making far more revenue-generating transactions prohibited transactions... unless, of course, there was some magic-like way that advisors could engage in prohibited transactions without incurring any penalties.

Well, believe it or not, there is! Under section 4975(c)(2) of the Tax Code, the Secretary of the Treasury (read "IRS") is given the power to grant exemptions from prohibited transactions defined under the Tax Code that mirror those defined under ERISA. However, in order to streamline and unify the exemptions for both the Tax Code and ERISA, the authority to grant exemptions for both was given to the Secretary of Labor (read "the Department of Labor"). Thus, we arrive at the present situation.

THE FIDUCIARY RULE AFTERMATH Are You Meeting Your Clients' Standards?

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