

Beginnings

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By Melanie Waddell

Fiduciary Fall

ERISA attorneys see DOL and SEC fiduciary rule proposals being unveiled this autumn; Phyllis Borzi weighs in with her fears, hopes about what they'll include



With new political appointees installed at the Department of Labor and the Securities and Exchange Commission, fiduciary rule activity will start heating up.

Preston Rutledge is the new head of the Labor Department's Employee Benefits Security Administration (EBSA), which means Labor now can begin revising the rule and then issue a proposal for comment. Industry officials anticipate such a proposal coming in the fall, with a separate SEC fiduciary rule being unveiled simultaneously.

While steeped in employee benefits knowledge and having familiarity with Labor's fiduciary rule, Rutledge — former counsel to the Senate Finance Committee on employee benefits and retirement issues, who also has served as a senior tax law specialist at the Internal Revenue Service — still has “a lot he needs to deal with,” said Brad Campbell, the former head of EBSA who's now counsel with Drinker Biddle & Reath in Washington, during a recent webcast.

In 2017, the talk surrounding Labor's

fiduciary rule was “about timing — when would the rule go into effect, which parts?” Campbell said.

In 2018, it's “going to be about sorting through the actual content, and that is going to take [the DOL] a while to do because there's just a lot there that we've not really had discussions with the department on and wouldn't have been ready until now — with political leadership — to start engaging on those issues,” he said.

While Labor's rule became finalized under the Obama administration, “this administration is ultimately going to make the policy decisions that go into what the new rule, or the new reformed rule, will look like. So some of these conversations have to be had anew,” Campbell added.

Fall “is a reasonable estimate” for release of Labor's revised fiduciary proposal, Campbell opined. “If you assume that [Labor] needs to complete their changes by July 2019, which is when the deferred provisions of the current exemptions — the most onerous parts” of Labor's fiduciary rule take effect, fall “really is the deadline for action by DOL.”

In fact, both Labor and the SEC “need to have their new plans in place and moving by that time frame to avoid further conflict and problems in how their rules work,” Campbell argued.