

DOL Holds: Security Interest Creates IRA Prohibited Transaction

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On October 27, the Employee Benefits Security Administration of the U.S. Department of Labor (DOL) released Advisory Opinion 2009-03A (Advisory Opinion), which could have implications for brokerage firms and other financial institutions that offer individual retirement accounts (IRAs) for their clients. The Advisory Opinion concludes that a prohibited transaction occurs where a security interest is created in either (i) the personal assets of the owner of the IRA covering the debts of the IRA, or (ii) the assets of the IRA covering the personal debts of the IRA owner, for the benefit of the financial institution.

Thus, language in account agreements that provides that the assets of one account can be used to satisfy obligations of another account can be problematic where one account is either an IRA or an account holding the assets of a plan subject to the prohibited transaction rules under either Employee Retirement Security Income Act of 1974, as amended (ERISA), or section 4975 of the Internal Revenue Code of 1986, as amended. It is interesting to note that the DOL did not indicate in the Advisory Opinion whether any of the Prohibited Transaction Class Exemptions are available to cover these issues.

Accordingly, brokerage firms and other financial institutions that offer IRA and ERISA accounts should review their client agreements to assess the ramifications of the conclusions found in the Advisory Opinion.

If you have any questions on any of the issues discussed in this LawFlash, or would like assistance in reviewing any brokerage agreements that may potentially be affected by the guidance provided by this Advisory Opinion, please contact any of the Morgan Lewis attorneys listed below:

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