
From: Mr. Paul Kampner [mailto:pkampner@tmarkassociates.com]

Sent: Saturday, October 23, 2010 10:10 AM

To: EBSA, E-ORI - EBSA

Subject: Definition of Fiduciary Proposed Rule

You have clearly taken a major step in the right direction. As a consultant in the industry, I am only too well aware of the influence of these people and their ability to avoid being held accountable for their actions.

I would suggest that you expand the definition even further by extending it to those who offer target date funds to plans. While the plan sponsor is a fiduciary and has ultimate responsibility for the selection and monitoring of all fund options (including target date funds), I don't believe they understand their responsibilities when it comes to these funds. Most of the time there is no analysis at all of the fund. It is simply chosen because it is offered by the record keeper or administrator of the plan that has a vested interest in the fund selected. Since the vast majority of these funds are fund-of-funds exclusively invested in the proprietary funds of the target date fund manager, there is an inherent conflict of interest. Not only is there a conflict, the underlying fund selection is so blatantly biased as to guarantee sub par performance for all those that invest in the funds. If the managers that construct these funds were considered to be fiduciaries, the underlying fund selection will be based on the best available principle rather than the best one company has to offer.

Based on extensive work I have done in analyzing target date funds and the underlying funds in which they invest, are accumulating substantially fewer assets than they would if the target date fund sponsors were held to a fiduciary standard that would force them into an open architecture structure. This is particularly important in view of the fact that many of these funds serve as the QDIA for the plan.

I hope you will consider extending the definition to include the sponsors of these funds. If you chose not to designate them as fiduciaries, you should at least **emphasize** that those who recommend or select these funds have a duty -- even though they already have it -- to determine what these funds are properly constructed with best interests of plan participants in mind. Making this happen could be the difference between a participant retiring as anticipated and having to get by on less than needed.

Thanks for your consideration of this issue.

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