
Sent: Thursday, January 27, 2011 5:58 PM
To: EBSA, E-ORI - EBSA
Subject: Comment on the Proposed Fiduciary Rule

My firm respects fiduciary roles but is not in a position to challenge those who don't. So we hope you will respect our anonymity when we tell you that lots and lots of registered reps/brokers/advisers have no intention of playing by your new fiduciary advice rules. Rather, they intend to hide behind a loophole you've created.

...twice.

If you recall, the original PPA section 624 regs required QDIA allocations be either tucked inside a '40 act fund or controlled by an erisa 3(38) fiduciary. However, mega plans and mega consultants lobbied-in model portfolios as a sanctioned QDIA. This created a loophole through which small plan advisers can slip past PPA section 601 (and now the proposed Fiduciary Advice Rule) by simply calling their potentially imprudent/conflicted advice a "QDIA asset allocation model".

Here's the problem: the final QDIA reg threw the fiduciary liability of model portfolios back to the plan sponsor. Again, fine for a mega plan. However, we doubt the thousands of small plans that were subsequently sold [potentially] imprudent/conflicted models understand that (1) their adviser is exposing them to prohibited transactions, for which (2) they are personally liable, and, for which (3) the advisor has a get out of jail card courtesy of the US Department of Labor.

It is no surprise, then, that every recordkeeper (...OK, every recordkeeper that doesn't have a self-dealing proprietary lifecycle fund!) now offers a tool that turns a plan's style-box funds into model portfolios. Big custodians are making the loophole easier to use by developing tech that allows model portfolios be traded across recordkeeping platforms.

The "oops you've done it again" is on page 17 of the proposed rule. You lump models into a general exemption: "plan information, general financial and investment information, *asset allocation models*, and interactive materials – would not involve advice or recommendations within the meaning of paragraph (c)(1)(i) of the current regulation. The proposed modifications to the advice and recommendations described in paragraph (c)(1)(i) would not change this conclusion."

If your intent was to exempt generic asset class "pie charts", you need to make this clear. Specifically, the Rule should state that the exemption does not apply to models that map stock/bond/int'l asset classes to plan-specific stock/bond/int'l funds in an investable manner. To close the loophole the Rule should further state that:

- o Taking discretion over model portfolio allocation & construction is a fiduciary act
- o That an adviser doing so is liable under erisa
- o That the plan sponsor must ensuring the allocator has no conflicts of interest.
- o That the sponsor must prudently selecting & monitoring the adviser's allocation credentials, track record, processes, and insurance.

If you do not close the QDIA/Fiduciary Rule model portfolio loophole, the very intermediaries you seek to control will hide behind it, while leaving their small business owners clients liable for their losses.

Regards,

Anonymous