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Docket: EBSA-2010-0050
Definition of the Term ''Fiduciary''

Comment On: EBSA-2010-0050-0001
Definition of the Term Fiduciary

Document: EBSA-2010-0050-DRAFT-0001
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General Comment

See attached file(s)

Attachments

EBSA-2010-0050-DRAFT-0001.1: Comment on FR Doc # 2010-26236

The two chief goals of the definition of a fiduciary are to protect the interests of the plan sponsors and participants. We'd like to address the ladder point pertaining to the participants and, more specifically, the distribution advice made by many plan advisors.

The ultimate objective of retirement plans is to provide sufficient income replacement for the participants at retirement. However, all too often this goal is undermined by the needs and conflicting objectives of the plan advisors in the distribution phase.

In most instances, participants that are advised to distribute their assets from employer sponsored plans to individual accounts have three considerable disadvantages:

1. the participants lose the law of large numbers and the institutional pricing afforded to corporate plans - the participants now receive more expensive "retail" pricing instead of the institutional rates including higher commissions, higher internal costs and transaction fees
2. corporate subsidized plan level expenses are lost
3. the new rule under ERISA 408(b)(2) mandating the full disclosure of retirement plan advisors and vendors' compensation is not applicable.

We believe the solution is to require complete disclosure and comparisons of the costs of the current plan including who bears the burden of those expenses (the plan and/or participants) with the expenses and commissions associated with the recommended distribution alternative. The illustration should include first year costs and any longevity expenses associated with such recommendations.

Moreover, the disclosure should be required not only by the advisor on the plan but by others within the same broker dealer or referrals made by the advisor to other professionals who receive direct or indirect compensation. This will help alleviate internal and external referral programs aimed at mining the assets of the participants including but not limited to insurance, estate planning (wills and trusts), etc.

The aforementioned disclosures and comparisons should be required to be filed with the plan sponsor (at the request of the plan sponsor) with safe harbor protection given to plan sponsors for distribution recommendations made by the advisors. This will provide the plan sponsor with the ability but not the responsibility or requirement to review such recommendations to determine if the advice and counsel of the advisor is in the participants' best interest.

This transparency will help ensure the participants receive a true cost/benefit analysis of the current and recommended investment strategies. If the distribution result is higher costs, it may be well worth the tradeoff if the circumstances are appropriate. For example, if a participant has the opportunity to receive greater diversification, broader investment choices or guaranteed income for life or death benefits, it may be a prudent recommendation and decision. However, the advisor will have to disclose if there is, for example, an upfront annuity commission of 10% or a mutual fund sales load of 5.50% compared to a commission-free environment afforded to most corporate retirement plans.

With an industry plagued by conflicts or perceived conflicts of interest, such transparency will benefit the plan participants and the industry as a whole. It will ultimately better align the needs of the participants with the distribution recommendations of the advisor.