4 Reasons Why Plan Sponsors Should Care About the Fiduciary Proposal

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As I talk to retirement plan advisors and plan sponsors around the country, there seem to be three camps of thought on the Labor Department's fiduciary reproposal:

- those who think it will be a big deal;
- those who think it will be a big deal;
- those who think it will be a big deal but manageable (once certain key issues are addressed); and
- those who are nearly completely oblivious as to the proposal, its potential impact or its current status.

Unfortunately for advisors in the first and second category, nearly all plan sponsors seem to be in the third group.

Here's why plan sponsors should care about the proposal.

You might have to change your plan education materials.

Remember back when your plan education materials only had generic fund references, and your participants struggled to figure out which of the specific funds on their plan menu were supposed to match up with those colored pie chart pieces? Remember how frustrated they were when you couldn't tell them? And how poor the results were? Perhaps not, because you've been able to show sample asset allocations including actual fund names for well over a decade now as participant education.

However, as currently proposed, the Labor Department's fiduciary proposal would consider any specific fund references to be advice, not education. And that would make the folks who provide such materials fiduciaries. And that would likely mean a return to education materials that aren't nearly as educational.

You might have to change advisors.

The rules about how advisors work with retirement plans and retirement plan participants are getting ready to change, arguably in ways as significant as at any time since the passage of ERISA. For some advisors, that may mean that they will want to focus on different areas, some may choose to focus on different size plans, or to forgo working with plan participants altogether.

And while this could also bring a whole new generation of advisors to choose to work with these plans, this is a big change. And though we don't yet know what the ultimate result will be, things will likely not

be the same, particularly for smaller employers, who may very well find that the advisors they work with now will not be willing (or able) to serve their plans under the new regimens.

Your advisor might be more expensive.

There are doubtless advisors and advisor practices out there who won't have to change a thing in order to comply with the new regulations, and whose fee structure won't be affected. But others will, and those who do have to make changes could have to make a lotof changes - and that could affect how, and how much, they charge. And that could, of course, have an effect on others.

These changes might not be effective immediately, and how - and how much - will obviously depend on exactly what form the final regulations take. There will almost certainly, at least at the outset, be fewer advisors working with retirement plans. As for what that may mean to their costs, only time - and the final regulations - will tell.

Your advisor may not be able/want to help participants with their rollover decisions.

Today many retirement plan advisors only work with plans, or with participants in those plans. However, a growing number either work with participants as they consider a rollover decision, or have others in their firm who do. Participants who have developed a relationship with a plan advisor while they are accumulating retirement funds often have an interest in extending that relationship to the time when they are trying to figure out what to do with a rollover, or how to create a reliable stream of retirement income that won't end before their retirement (particularly since a significant percentage of plans don't offer a systematic withdrawal option). Similarly, plan sponsors, who have undertaken a review and monitoring of those advisors while they work with plan participants have generally prefer to see those discussions taking place with that trusted advisor than with some random advisor off the street.

And for those plan sponsors who want to encourage ex-employees to roll those balances over to another account, the current plan advisor can be a valuable help in facilitating that decision.

However, the Labor Department's current proposal would, at best, greatly complicate this relationship. The services provided to a participant among many in a workplace retirement plan are quite different from that for an individual in a rollover situation, or one who would be rolling those savings into an individual retirement account (IRA), with the broader array of choices and decisions that would entail. However, the DOL's current proposal would restrict even a level-fee plan advisor from working with an individual participant circumstance if he or she charged more, even if the level of service was significantly different and more complicated, even if he or she charged a flat fee for those highly individualized services.

That's why the American Retirement Association and NAPA have advocated for a "level-to-level" compensation exemption that would address this issue.

Of course, at this point, these potential issues are just that - potential issues. The Labor Department has taken great pains to assure legislators, industry professionals and the public at large that they have

listened, and are making a serious effort to address the major concerns expressed regarding the proposal (our concerns are outlined here and here).

Still, the devil is (always) in the details, the "proof" in the pudding. But as we wait to see how the Labor Department has chosen to address the concerns expressed, plan sponsors - and advisors - who haven't yet given consideration to the potential new landscape for retirement plan education and advice would be well advised to do so.