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401(k) Fiduciary Newsletter

for Business Owners, Human Resource Directors, CFO's, Plan Fiduciaries and Administrators

What the Proposed Fiduciary Rule Means for Plan Sponsors

Every 401(k) Plan Sponsor should by now know about the Department of Labor's new *proposed fiduciary rule*. The [proposed rule and related weighty commentary](#) signify huge changes to 401(k) administration and likely more confusion, costs and risk. Plan Sponsors should pay close attention to what changes the final rule will require if it is passed.

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If the sheer bulk of ERISA has not yet impressed upon 401(k) Plan Sponsors the significant responsibilities and risks of offering a 401(k) plan, the DOL's new proposed rule should.

Citing the harm to retirement investors, the Department of Labor has taken on the substantial task to change the law to require all retirement plan advisors to be fiduciaries.

PlanAdvisor offers a good primer about some of the changes the proposed rule in its article:

[**Changes Plan Sponsors Would See with New Fiduciary Rule.**](#)

Most significantly, the proposed rule's definition of "fiduciary" includes anyone offering advice on a 401(k) plan or on an IRA account.

While "Investment Advisors" already adhere to a fiduciary standard, the proposed rule requires investment and insurance salespeople to act as fiduciaries. Fiduciaries are required to provide prudent investment advice and put the interests of the investor before their own.

Two major exceptions exist to the fiduciary advice requirement.

First, the seller's carve-out: where salespeople who are clearly selling product to "large" 401(k) plans (plans with more than 100 participants) are not deemed to be fiduciaries. Note that this rule does not apply to plans with less than 100 participants.

Second, a carve-out exists for participant education, but if that education points to specific funds within an allocation model, the educator becomes a fiduciary. The result of this rule may be advisors who reduce the level of education to participants, which could be harmful.

Other exemptions exist for insurance sales and sales of investment products. It remains to be seen what changes will be made in the final rule to address these issues.

Whether the final rule will have any teeth or will just add cost and confusion to the industry. If enacted, the rule may create comfort among plan sponsors yet provide loopholes for advisors to continue to place their own interest above those of plan participants.

