



Advice to Plan Sponsors

THE ISSUE: Under the Department of Labor's (DOL) proposed fiduciary rules, investment advisors can only work on a fee-for-service basis with plan sponsors—including smaller employers—to design and implement 401(k), 403(b) and other similar plan designs that include a self-directed investment option.

EXPLANATION: In its proposed best interest contract (BIC) PTE, the DOL excludes advice on design, implementation, menu option choices, and other provisions, to plan sponsors that include self-directed investment options in their 401(k), 403(b) and other similar retirement plans, unless that advice is provided on a fee-for-service basis. Thus, under the proposed DOL fiduciary rules, the advisor in such situations could not be compensated by commissions, 12b-1 fees, trailing commissions and the like.

THE PROBLEM: Affordability is a crucial issue, especially for small plans, at the employer level as well as at the individual level. Rules that leave no option other than payment of an upfront fee for advice to plan sponsors eliminate an important source of affordable professional investment advice. Further, because many small businesses make the decision to establish a retirement savings plans for their workers primarily because of the encouragement, education and help provided by advisors, many such businesses will not establish retirement savings plans if professional advisors are no longer able to work in this market. That, of course, means the employees at those companies will not be covered by an employer-sponsored retirement savings plan. The result will be considerably fewer American workers—many if not most of whom are of modest means—accumulating adequate retirement savings.

DOL chose to continue to allow both the fee-for-service and the so-called “conflicted compensation” retirement plan advice business models in its proposed rule, in recognition of the fact that for many businesses and individuals the broker-dealer/registered representative business model (under which compensation is product-derived commissions, etc.) is the most effective, efficient and economical choice. A rule that eliminates the ability to use this model in the important context of designing, establishing and maintaining a plan that includes self-directed account choices effectively guts the decision to permit both the fee-for-service and the commission-based business models.

THE SOLUTION: DOL must clarify that when an advisor is compensated via commissions, 12b-1 fees, trailing commissions, fee-sharing or other forms of otherwise so-called “conflicted compensation,” that the advisor may still offer professional investment advice to plan sponsors on the number and types of investments from which their plan participants may choose.

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