

Retirement Plan Regulations Should be Modernized

Definition of Fiduciary

- 401(k) plans didn't even exist in 1975, but that is the last time the Department of Labor (DOL) issued regulations defining a fiduciary with respect to providing advice on retirement plan investments. In 2010, the Department introduced proposed regulations on this issue but, due to various concerns and questions, DOL decided to re-propose the rule.
- **ASPPA applauds DOL's efforts in revisiting this definition of fiduciary as it applies to ERISA plans.** Updating the regulations to reflect the many changes that have taken place over the past thirty years is long overdue. Under the existing regulation, advisors can escape fiduciary responsibility unless the advice is provided on a regular basis and is the primary basis for investment decisions. This rule leads to a regulatory definition of "advice" that is at odds with a common sense definition. Companies deserve to know whether they are actually receiving independent investment advice from a fiduciary or not. However, a re-proposed rule should require a more reasonable disclosure for those that want to take advantage of the seller's exemption than was in the initial proposal.
- **Individual Retirement Accounts (IRAs) should not be covered by a re-proposed rule.** The Department of Labor should not establish rules without an effective means to enforce them. Applying a new definition of fiduciary to IRAs would simply result in heavily regulated firms complying with the rules while less formally regulated companies, who know there will be no enforcement, do not. IRA investors would end up being subject to greater risk by giving unscrupulous providers a competitive advantage.

Electronic Delivery

- DOL's rules on electronic disclosure need to be updated to allow plans sponsors and participants to take advantage of the efficiencies and conveniences that are increasingly available in the marketplace.
- Under current DOL regulations, disclosures to participants must be provided on paper unless the participant opts in to electronic disclosure. (There is an exception for employees that have access to a computer as an integral part of their duties at work, but the exception is too limited to be very useful.) The result is a lot of wasted paper and business expense to provide participants with notices that are not read. Additionally, an increased amount of notices may be read if they were provided in a more useful, interactive basis through electronic means.
- New fee disclosure rules will require substantial additional disclosure – disclosure that many participants would find more useful if provided electronically. DOL recently issued guidance on electronic disclosure of this new information, but the guidance was disappointing, providing little or no assistance in streamlining the disclosure process.
- Participants should always be able to elect to receive paper disclosures, but plan sponsors and service providers should be permitted to default participants and beneficiaries into receiving documents electronically, instead of requiring an affirmative election.