
EBSA Proposes Broader Fiduciary Definition for Plan Advisors

By Editor Test *Wed, Dec 1, 2010*

The proposed rule defines certain advisers as plan fiduciaries even if they do not provide advice “on a regular basis” to an employee benefit plan or to plan participants, according to the posting in the Federal Register yesterday.

The Labor Department’s Employee Benefits Security Administration (EBSA) posted a proposed rule in the Federal Register yesterday that would broaden the definition of a “fiduciary” of an ERISA retirement plan and protect “participants from conflicts of interest and self-dealing.”

Public comments are invited until January 20, 2011.

The proposed rule defines certain advisers as plan fiduciaries even if they do not provide advice “on a regular basis” to an employee benefit plan or to plan participants, according to the posting. Fiduciaries, by definition, must place their clients’ interest ahead of their own and may be held personally liable for lapses in duty.

“Upon adoption, the proposed rule would affect sponsors, fiduciaries, participants, and beneficiaries of pension plans and individual retirement accounts, as well as providers of investment and investment advice related services to such plans and accounts,” the posting said.

“The proposal amends a thirty-five year old rule that may inappropriately limit the types of investment advice relationships that give rise to fiduciary duties on the part of the investment advisor. The proposed rule takes account of significant changes in both the financial industry and the expectations of plan officials and participants who receive investment advice.”

© 2010 RIJ Publishing LLC. All rights reserved.