

Corporate & Financial Weekly Digest

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DOL Proposes Rule Defining "Fiduciaries" of Employee Benefit Plans

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The Employee Benefits Security Administration (EBSA) of the U.S. Department of Labor has proposed a rule to define more broadly the term “fiduciary.” The proposed rule would amend 29 CFR 2510.3-21(c), which was issued in 1975 following the enactment of the Employee Retirement Income Security Act (ERISA), and defines when a person who renders investment advice becomes a fiduciary under ERISA. The amendment is based on findings that indicate that the 1975 rule’s approach to fiduciary status may inappropriately limit its ability to protect plans, participants and beneficiaries in the current marketplace.

The proposed amendment takes account of changes in the expectations of plan officials and participants who receive investment advice, and details added circumstances where providing investment advice is subject to ERISA’s fiduciary duties. It also takes account of industry changes, including, among other things, the variety of complex fee practices currently in use and the conflicts of interest that may arise from these practices. If enacted, the amendment could result in an increased number of service providers being classified as fiduciaries of the plans to which they provide services. Classification as a fiduciary could result in higher costs of doing business due to increased exposure to liability.

“We believe that this proposal more closely reflects the statutory language of ERISA and the realities of the current investment marketplace, and therefore will ensure those who provide investment advice are held accountable as fiduciaries under the law,” said Phyllis Borzi, Assistant Secretary of Labor for EBSA.

Click [here](#) for the DOL release.

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