

THE NATIONAL LAW REVIEW

Designated Investment Alternatives: Interesting Angles on the DOL's Fiduciary Rule #8

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This is my eighth article about interesting observations "hidden" in the fiduciary regulation and the exemptions.

The final regulation on fiduciary advice continues, as education, the current practice of providing participants with asset allocation models that are populated with a plan's designated investment alternatives (DIAs).

However, the rule imposes a burden on plan sponsors to monitor those models and which DIAs are used for the models. The fiduciary focus should be on the costs and payments from investments to providers and advisers. The preamble says:

"In this connection, it is important to emphasize that a responsible plan fiduciary would also have, as part of the ERISA obligation to monitor plan service providers, an obligation to evaluate and periodically monitor the asset allocation model and interactive materials being made available to the plan participants and beneficiaries as part of any education program.

That evaluation should include an evaluation of whether the models and materials are in fact unbiased and not designed to influence investment decisions towards particular investments that result in higher fees or compensation being paid to parties that provide investments or investment-related services to the plan."

Who will help plan sponsors satisfy that fiduciary duty?

Most plan sponsors won't know about this duty. Even if they become aware of the responsibility, they probably won't know how to evaluate if the "education" models are disguised vehicles for generating management fees for proprietary products or more revenues for advisers or their financial institutions.

This looks like an opportunity for high quality advisers to provide a valuable service to plan sponsors.

The views expressed in this article are the views of Fred Reish, and do not necessarily reflect the views of Drinker Biddle & Reath.

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