

News

Kreps Spotlighted by PLANADVISER on Fiduciary Rule Overhaul

PUBLISHED

11/14/2023

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PLANADVISER

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An article by [Michael Kreps](#), Groom principal and chair of the firm's [Retirement Services](#) group, titled, "[DOL's New Fiduciary Rule: Third Time's the Charm?](#)," on the new fiduciary rule was referenced throughout *PLANADVISER*'s article, "Advisers Selling Product, Not Process, in Fiduciary Rule Crosshairs." In his article, Kreps highlighted the major changes put forward in the Biden Administration's version of the rule as compared to previous versions.

PLANADVISER reported that in his post, Kreps summarized that "the situation could be similar to an attempt by the administration of former President Barack Obama to amend the regulations." According to the outlet he continued, noting that "although the administration of President Joe Biden and the DOL have given it a new name—the retirement security rule—they seek a similar result: bringing individual advisers seeking one-time retirement rollovers or selling annuities under ERISA."

According to *PLANADVISER*, "For qualified plan retirement providers already working with clients under ERISA, it may affect how they talk to potential clients," said Kreps.

"The proposed rules don't necessarily change the day-to-day fiduciary advice advisers are providing plans." Kreps continued, "But the rules do impact how advisers market themselves. DOL acknowledged that touting your own qualifications isn't advice in and of itself, but if an adviser talks about investment strategies or products, the sales discussion can quickly become fiduciary advice, which is a problem because it could lead to ERISA violations."

The outlet reported that, according to Kreps, "That extends to the DOL's mention of advisers giving retirement investment menu advice."

PLANADVISER included that Kreps said, "In its attempt to ensure all investment menu discussions are part of the fiduciary rule, the DOL 'seems to be trying to get at the marketing discussions that happen when a provider offers an investment platform.'"

"Historically, a person wasn't viewed as providing advice by just marketing a product, but DOL is turning that on its head and saying that you can become a fiduciary if you use the wrong words when describing the platform," said Kreps.

The outlet reported that he wrote that “operating as a fiduciary does not necessarily mean advisers won’t receive commissions for selling products like annuities. In the Securities and Exchange Commission’s Regulation Best Interest, which covers these types of one-off transactions, the regulator ‘was explicit that it was not banning commissions.’”

“Technically, DOL’s new rule would permit commissions, too, for those crossing the line into providing advice, but the financial institution would be required to ensure that the product is in the best interest of consumers and mitigate sales conflicts,” he added.

According to *PLANADVISER*, Kreps wrote that “there already are rules in place for selling commission-based products in 43 states by the National Association of Insurance Commissioners. But the DOL’s ‘best interest’ fiduciary overlay would mean a significant ramping up of process and resources that, in the end, could ultimately land on consumers.”

“The proposed rule would almost certainly increase distribution costs, because financial institutions and professionals will need to do more work and take more risk,” he said. “Most of those costs will ultimately be borne by consumers, and the segments of the market that can’t bear the costs will likely stop being served. That seems like basic economics, and the debate between DOL and the industry is whether that is a positive change.”

To read the article, [click here](#).