Fidelity, Empower to keep fiduciary services for 401(k) plan participants

The decisions mean the continuation of many services put in place due to the DOL fiduciary rule

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By **Greg Iacurci**

Fidelity Investments and Empower Retirement, two of the largest record keepers of defined-contribution plans, will continue to provide fiduciary advice to 401(k) participants via their call centers, even though the Department of Labor's fiduciary rule is now dead.

When the fiduciary rule went into effect in June 2017, Fidelity and Empower **assumed fiduciary responsibility** in some participant interactions, such as providing advice on 401(k) investment selection and allocation. That was a stark change in policy for both firms, and the industry as a whole. Prior to the regulation, retirement plan record keepers generally avoided a fiduciary role to the greatest extent possible.

To avoid fiduciary status under the fiduciary rule, which upped investment advice standards in retirement accounts, some record keepers said they would only provide education to participants on their options, rather than advice on what they should do in a particular circumstance.
However, both providers affirmed they will continue being fiduciaries to participants, even though the regulation was **officially taken off the books in June**, following a court ruling by the 5th Circuit Court of Appeals.

"We believe in the value of objective, third-party advice and we are acting in the best interest of our clients and their employees," Empower spokesman Stephen Gawlik said of its decision.

Empower's fiduciary advice extends to decisions involving retirement plan assets, such as investment selection and other advice, rollovers, distributions and savings decisions (such as saving in a retirement plan versus a health savings account, or saving in a Roth versus a pre-tax account), Mr. Gawlik said.

The companies' decisions come as advisers and other parties wonder what policies will stay and which ones will be reversed now that the DOL fiduciary rule is dead. Bank of America **Merrill Lynch**, for example, recently indicated it is **re-evaluating its ban on receiving commissions in retirement accounts**, though no final decision has been made.

InvestmentNews recently reported that Fidelity is **reversing its position** to assume fiduciary status when helping 401(k) plan sponsors make decisions about the investment lineup they offer to employees. That policy had been adopted as a result of the DOL fiduciary rule. A company spokesperson wasn't available by press time to describe why the company opted to keep the participant-level fiduciary services but not the plan-level ones.

Philip Chao, a retirement plan adviser, sees the Empower and Fidelity positions as a long-term strategy to keep participant assets with the providers and reduce competition from other providers for those assets.

"They're using 401(k) as a way to put a big net out there to catch as many fish as they can in the sea," said Mr. Chao, principal and chief investment officer at Chao & Co. "The wider the net — meaning the more services they provide — the more they own that sea, and the more those fish will come to them.

"It's not negative or evil," he said. "It is what it is."

However, plan sponsors and their advisers should prudently evaluate Empower's and Fidelity's offer of participant-level advice, rather than just defaulting into the offering, Mr. Chao said.

One of Mr. Chao's clients opted into Fidelity's participant-level fiduciary service last year. Fidelity, he said, will no longer be offering fiduciary advice on 401(k) distributions such as rollovers, but will on all other interactions involving investments.