What it means to be a `point in time' fiduciary

Timing is everything when it comes to giving advice to retirement plan participants.

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Fidelity Investments' decision to serve as a "point in time" fiduciary to 401(k) plan sponsors may have some people asking, "What does that mean, exactly?"

The answer boils down to timing, explained David Levine, a principal at Groom Law Group.

"There's really only one real definition of 'fiduciary' in [the c], but the question is: When are you acting as a fiduciary?" he said.

Financial advisers serving as investment fiduciaries to 401(k) plans typically have an ongoing relationship to the plan, meaning they help employers select investments for their 401(k) and continue to monitor the investments to assess if they're still prudent to use.

A point in time fiduciary, however, serves as a fiduciary at a particular moment through a one-time recommendation. It doesn't provide ongoing advice.

For example, an employer may ask a provider if it is prudent to add a particular fund to its 401(k), or for help assembling a 401(k) investment lineup. As long as the provider is clear about, and follows through on, limiting its advice to that one particular point in time, its liability only applies to the prudence of the recommendation at that moment.

The Department of Labor's fiduciary rule, which partly went into effect in June, broadened the scope of what is considered fiduciary advice and gave rise to the point- in-time moniker, Mr. Levine said.

"With the evolution of the fiduciary rule and the expansion of what it means to be a fiduciary, there are more situations where advice at a single moment in time could be seen as a fiduciary act. As a result, some people have started using the term point-in-time fiduciary," Mr. Levine said.