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an InvestmentWires' Publication

Tuesday, July 14, 2020

So the DoL Revamped the Fiduciary Reg ...

Two weeks ago, the folks at the **U.S. Department of Labor** released the updated version of their fiduciary rule, also referred to as the *fiduciary reg*. The proposed reg was published in the *Federal Register* a week later, on July 7, meaning that industry insiders have until August 6 to officially comment to the DoL.

In the meantime, **401kWire** spoke with trade group experts, ERISA legal eagles, and other DC industry insiders to get their takes on the updated proposal and what it might mean for the retirement industry.

The rule has been welcomed with open arms by some in the defined contribution industry.

"It is great for the industry to have so much guidance to help them work through, and always positive to have greater regulatory clarity," **Lew Minsky**, executive director of the Defined Contribution Institutional Investment Association (**DCIIA**), tells **401kWire**.

"We worked very hard on the fiduciary advice exemption and that has been our primary focus for the past few years," **Steve Saxon**, principal at **Groom Law Group**, tells **401kWire**. "We are very pleased the Department of Labor proposed an exemption."

"Those of us in the retirement service space would say maybe the requirements are too harsh," Saxon continues. "But you need a combination of investment protections along with what allows people to provide the services that are needed by plans and their participants, so I thought it was a pretty good compromise."

"Whenever you have a rule that is up in the air, as the fiduciary rule has been over the last several years, it provides uncertainty," the DCIIA's Minsky explains to **401kWire**. "So ultimately getting clarity once the final rule is in place will allow the different players in the industry to make decisions to align their service offerings with their service providers and to get their planning in place with the clarity and certainty that they know what the landscape looks like."

"We support any measure that provides relief for those fiduciaries who seek to provide investment advice for a fee or engage in certain principal transactions with plans," **Rich Rausser**, senior vice president at **Pentegra**, states. "These measures help ensure that plans are being offered in the best interest of participants — and as an independent fiduciary, we agree."

"The SEC's Reg BI achieves increased transparency and investor protection while also preserving their choice of financial advice, products, and services," states **Dale Brown**, **FSI** president and CEO. "We are hopeful that the DOL's proposed rule strikes the same balance."

"Yes, I was expecting it, and yes I am in favor of harmonizing with the SEC," **David Levine**, principal at Groom Law Group, tells **401kWire**.

Like Levine, the majority of trade group experts reported little to no surprise regarding the rule proposal.

"We are not surprised, it is what we expected, Groom's Saxon explains to **401kWire**. "All they did in the fiduciary rule is reinstate it; it's not news. The news is the exemptions, and we believe it will be really good for the community."

"The proposed exemption follows many of the principals that financial advisors have already had to follow under the SEC rule," **Mike Hadley**, partner at **Davis and Harman**, tells **401kWire**. "I think that the Department of Labor signaled for a long time that it was going to release something close to what the SEC had done, so this really wasn't much of a surprise at all."

"Directionally, it is not a big surprise to see the DoL go back to the five part test and try to reinforce prior guidance," DCIIA's Minsky tells **401kWire**.

"I think the guidance around fiduciary status of rollover guidance may have been the only thing that was a little bit of a surprise in the guidance of this release," Minksy continues.

"The conditions that the Department of Labor are proposing seem reasonable and protective for retirement savers," Davis and Harman's Hadley continues.

In terms of the industry, the DoL's chief is pitching the proposed rule as a way to open the retirement space up.

"Today's proposed exemption would give Americans more choices for investment advice arrangements, while protecting the retirement savings of American workers," U.S. Secretary of Labor **Gene Scalia** stated last month. "The exemption would add to the tools individuals need to make the right decisions for their financial future."

"It is much broader than any exemption issued by the department before in the advice space," Groom's Saxon tells **401kWire**. "This will really expand the variety and scope of advisory services and financial institutions."

"The proposed exemption would be broadly available to investment advice fiduciaries who adhere to a best interest standard and plainly inform retirement investors that they are acting as fiduciaries when making investment recommendations," **Jeanne Klinefelter Wilson**, acting assistant secretary of labor for the Employee Benefits Security Administration (**EBSA**), stated last month. "The proposed exemption would authorize a wide range of investment advice models and relationships, consistent with the fundamental goal of ensuring that workers and retirees receive investment advice that is in their best interest."

"I guess at first glance, it makes you think they didn't change any rules," **Jason Roberts**, partner at the **Retirement Law Group** tells **401kWire**. "They repeatedly said, 'We are not changing the fiduciary rule, but here are five or six interpretations that we have that, in essence, change the definition.' From a technical perspective, they didn't go in and add or take out any language in the regulation itself, but they do make a number of leaps that are not consistent with prior department of labor exemptions."

"In light of those changes, there is a very generous exemption you can use," Roberts continues. "And by generous, I mean it is extra broad in the type of conflicted compensation that an individual could receive."

"We are thoroughly reviewing the rule proposal. However, we expect the Department heeded the concerns outlined by the Fifth Circuit Court of Appeals and consulted with the SEC to avoid conflicts with Regulation Best Interest (Reg BI)," FSI's Brown states. "These regulations must work in tandem to prevent conflicting requirements for financial advisors working to diligently comply with the rules and to avoid creating confusion among investors. This will also ensure Main Street Americans have access to the quality, affordable financial advice they need to achieve their financial goals."

"The Labor Department's new fiduciary proposal is intended to align the standard of care for Employee Retirement Income Security Act (ERISA) fiduciaries providing investment advice with the conduct standards in the Securities and Exchange Commission (SEC) Regulation Best Interest and the fiduciary duty of registered investment advisers under securities laws," **Paul Stevens**, president and CEO of **ICI**, states.

"As such, this proposal presents an important step toward aligning standards of care for all investors, whether they are saving in a retirement account or other investment accounts," Stevens continues. "Consistent standards would help investors achieve better financial outcomes while increasing efficiency and preserving investor choice and access to advice. This will improve financial services providers' ability to deliver holistic investment advice and financial planning services to retail investors. ICI looks forward to commenting on the DOL's proposal."

"Since the U.S. Department of Labor (DOL) introduced their original 'Fiduciary Rule' in October 2010, the Financial Planning Coalition has called for an unambiguous fiduciary standard to apply to all persons who provide advice to retirement plan investors," the **Financial Planning Coalition** folks write in a statement. "Unlike the past when Defined Benefit plans assured financial independence in retirement, Defined Contribution plans offer no such assurance and place the burden of investment decision-making squarely on the shoulders of American workers and Main Street investors."

"We believe financial advisers who provide advice to consumers on their ERISA-qualified plans must act in a fiduciary capacity at all times," the Financial Planning Coalition statement continues.

And now the proposed reg's comment period is well underway.

"As an organization, we are in the process of pulling together a group to review and share a high level of comments with the department to help them finalize the rule," DCIIA's Minsky tells **401kWire**. "We want to make sure we provide any necessary feedback to get the best paradigm in place to make sure that clarity leads to the best outcome for the players but also the security of American workers."

"We look forward to providing comments and working with the Department to achieve a workable standard," FSI's Brown states.

"The Financial Planning Coalition will review the 'Investment Advice Rule,' engage a range of stakeholders to assess the efficacy of the Rule and provide comments on the proposal to DOL prior to the conclusion of the 30-day comment period," the Financial Planning Coalition folks wrote in a statement. "The Coalition intends to focus on the extent to which DOL's Investment Advice Rule would provide additional protections for retirement savers under ERISA beyond those under the Securities and Exchange Commission's (SEC) new Regulation Best Interest which goes into effect today."

"In our public comment letters to the SEC concerning Regulation Best Interest, the Coalition strongly encouraged the SEC to use as a template CFP Board's revised Standards that extend the fiduciary obligation of a CERTIFIED FINANCIAL PLANNER professional to all financial advice," the Financial Planning Coalition statement reads. "We hope that the DOL proposal does not merely mirror language from Regulation Best Interest, but instead proposes strengthened safeguards under ERISA that are consistent with the robust fiduciary standard contained in CFP Board's revised Standards."

"At the end of the day, I think we are going to continue to hear that the financial institutions may have dodged a bullet and the investment advocates are going to pound the table saying this is a sham regulation," the Retirement Law Group"s Roberts tells **401kWire**.

"There are things that could be improved on, but by and large, we are very pleased," Groom's Saxon concludes.

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