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DC Industry Generally Gives Fiduciary Rule a Thumbs-Up

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Nearly six years after the Obama administration introduced an expansion of who is considered an ERISA fiduciary, the final rule was largely well-received in the defined contribution plan universe

Advocacy groups are mostly in favor of the new standard, released April 6 by the Department of Labor.

Deborah Forbes, executive director of the Committee on Investment of Employee Benefit Assets, which represents 100 large plan sponsors, said her members, who are studying the final rule, welcome it. “We believe that anyone advising participants about their 401(k) assets should be held to the same fiduciary standards as plan sponsors,” Ms. Forbes said.

James A. Klein, president of the American Benefits Council, said employers appreciate some changes made in the final rule but worry about the “potential chilling effect” if employers cannot provide routine guidance through human resources staff and outside service providers.

In a briefing for reporters, Secretary of Labor Thomas E. Perez on April 5 said the updated rule, now known as the conflict of interest standard, is a “fundamental principle of consumer protection” because it requires anyone giving retirement investment advice to act in their client's best interests. “It's no longer a marketing slogan; it's the law,” Mr. Perez said.

The rule expands the definition of fiduciary investment advice but clarifies that plan sponsors can continue to provide education without triggering fiduciary duties. Plan sponsors with more than $50 million in plan assets can continue to offer investment advice if certain conditions are met, and smaller plans can use best-interest contract exemptions.

Firms providing investment advice to plans must acknowledge in writing they are acting as fiduciaries. Advisers can continue to receive common forms of compensation, as long as they put their clients' best interest first and disclose conflicts.

Mr. Perez stressed that DOL and White House officials went to great lengths to listen and respond to concerns raised by the retirement service industry and some members of Congress about whether a tougher standard would be too onerous and, ultimately, too expensive for lower-income savers.

Despite those efforts, opposition to the rule remains among certain Republicans in Congress and others. Several groups anticipate lawsuits will be filed challenging its

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legality on grounds of being too broad and beyond the scope of the Department of Labor's authority to implement.

One of the biggest adjustments made in the final rule was giving advisers a full year to revamp their systems, up from a proposed eight-month implementation period. Compliance will be phased in through January 2018.

Another “welcome change,” said Karen Barr, president and CEO of the Investment Adviser Association, whose members have supported a fiduciary standard, was that the final rule did not favor low-fee or low-cost options over returns or other considerations. The new rule allows best-interest contracts to be signed at the same time as other paperwork, and only requires that existing customers be sent a notice of the new standard. The rule also clarifies that there is no bias against proprietary products offered by the parent firm of an adviser.

“I am quite confident that the industry will be able to comply,” said Mr. Perez.
Sen. Patty Murray, D-Wash., ranking member of the Senate Health, Education, Labor and Pensions Committee, said threats by some members of Congress to undo the new rule would not advance.

The rule is posted in the Federal Register.