

Financial advisers fear possible rollover rules

Regulations may prohibit reps, providers from competing in the lucrative market

[By Darla Mercado](#)

November 14, 2010 6:01 am ET

Regulators are considering new rules that would stop financial advisers and brokers from competing in the \$267 billion rollover market.

Last month, the Labor Department floated a rule that would expand the definition of a retirement plan fiduciary to include anyone who provides advice for a fee. Within that proposal, the department noted concerns that 401(k) plan participants may not be protected adequately from predatory advisers and brokers when rolling over their 401(k) assets into individual retirement accounts.

As a result, the department re-requested comments on whether the final version of the rule should also include as fiduciaries advisers and providers who counsel retiring workers about rolling over their 401(k) funds. Comments are due Jan. 20.

For brokers, the rollover market represents a huge source of business. The rollover IRA market is expected to hit \$266.7 billion this year and balloon to \$338.8 billion in 2014, according to Cerulli Associates Inc.

Over the next five years, more than \$1.5 trillion will roll over into IRAs, according to data from Mc- Kinsey & Co.

Of course, just what steps the Labor Department will take remain unclear. One possibility is that 401(k) service providers will have to increase disclosures to participants as they exit their plans, noted Marcia S. Wagner, managing director at The Wagner Law Group.

It will be more damaging for advisers and brokers, however, if the Labor Department applies its proposed fiduciary definition to advisers providing rollover recommendations.

In the worst-case scenario, even representatives who don't have a relationship with the retirement plan could be deterred from capturing rollover assets from participants, said Jason C. Roberts, a partner at Reish & Reicher.

COMPLIANCE CONCERNS

“It's not just a matter of disclosure or walling off your business,” he said. “You would be putting substantial compliance concerns on a business that might have nothing to do with servicing ERISA clients in a traditional sense.”

Participants could have a hard time getting guidance on their rollovers, Mr. Roberts said.

This possibility has advisers, brokers and providers worried.

“As far as rollovers out of 401(k)s, I understand the need to protect participants, and that can be done with disclosure and rules, but I don't think things are headed in the right direction,” said Bruce Harrington, head of retirement sales and investment strategy at John Hancock Financial Network.

The SPARK Institute Inc. and the American Society of Pension Professionals and Actuaries plan to submit comments to the department.

“The impact of the change here would be dramatic in the way the industry operates right now. There is a huge amount of effort made by providers to capture the rollover business, and this could definitely interfere and hamper that ability,” said Brian Graff, chief executive of the ASPPA.

“A lot of people are trying to figure out how they can talk to the plan participant in a way that's not using their authority as plan fiduciaries in order to render information so that people will be willing to roll over their assets to them,” Ms. Wagner said. “That's threading a needle.”

Experts said that there are different ways for brokers to contend with that prospective restriction, depending on how the Labor Department approaches rollovers.

One possibility is that advisers and brokers would have to stick to general education and information regarding rollovers, and in their capacity with the participant, the broker or adviser couldn't represent the plan, Ms. Wagner said.

“Moreover, the adviser has to disclose to people that they don't have to roll over the assets with them and that there are lots of options,” she said. The broker or adviser would also have to disclose whether he or she were receiving variable compensation and rendering impartial advice, Ms. Wagner said.

Advisers who work with retirement plans noted that while the spirit of the Labor Department's inquiry is well-intended, it needs to consider their business models.

“We need clarity on how one can [recommend rollovers] in a fiduciary capacity with regard to the plan,” said Edward M. Lynch Jr., managing director and chief retirement officer at Dietz & Lynch Financial Group. “You develop relationships with people as a plan adviser, and the natural progression is that they look to you to continue advising them when they take distributions.”

Jim Phillips, president of Retirement Resources Investment Corp., said that while it is appropriate to hold advisers and brokers to a higher standard for rollover advice, any future regulation will have to weigh the fact that there are situations when a rollover to a broker-dealer is the best decision for the client.

“There are many instances where the appropriate decision is to roll money into an investment vehicle that is not available within a plan,” he said. “Moving from institutional to retail pricing

may well increase the participant's costs and the broker's compensation, but it may still be a completely suitable and appropriate move.”

In such instances, it is reasonable to hold that person to a high standard of accountability, disclosure and documentation, Mr. Phillips said.

A record keeper, too, such as juggernaut Fidelity Investments, could be considered a fiduciary under any new rules, thus barring it from capturing rollover assets.

Jennifer Engle, a spokeswoman for Fidelity, declined to comment.

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