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Labor Dept. Issues Rule on 401(k) Advice

By Margaret Collins and Elizabeth Ody
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The U.S. Labor Department issued a rule today to expand access to personalized investment advice for workers in retirement savings plans, Assistant Secretary of Labor Phyllis Borzi said.

Advisers to 401(k)-type plans or IRAs will be able to recommend investments and receive fees from investment companies that offer funds in two cases: if they earn the same level of compensation no matter what products they select or if they use a computer model to pick the investments that has been certified by an independent third party, the department said. In both cases, the adviser also must satisfy other conditions such as disclosing fees and having an annual audit.

“Retirement security increasingly depends on the kinds of decisions that an individual makes,” said Borzi. “This type of advice can help workers avoid costly investment errors.”

Investment providers may have a conflict of interest when it comes to giving participant-level advice because of their variable compensation, which means they may have incentive to steer investors to funds with higher fees, said Marcia Wagner, managing director of the Wagner Law Group in Boston. “Plan participants need advice, and this is a way of offering it” without triggering a prohibited transaction under Labor Department rules, said Wagner, whose firm specializes in employee-benefits law.

The regulation applies to those who are fiduciary investment advisers as of Dec. 27, according to the Labor Department.

Separate Rule

In September, the Labor Department said it would delay a separate rule that would expand the scope of fiduciary responsibility for those providing advice to employers and individuals in retirement plans. Borzi said last month she expects to repropose the regulation next year.

That rule, as originally proposed, may have caused financial firms to offer fewer investment options in retirement accounts and shift to a fee-based model rather than commissions, Kenneth Bentsen, executive vice president of public policy and advocacy at the Securities Industry and Financial Markets Association, said at a July hearing in Washington.

Other rules around costs in retirement plans take effect next year, including regulations requiring certain fee disclosures by those who provide 401(k) investments to plan sponsors and information employers must give to workers about their accounts, according to the department.

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