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Retirement-Account Standards May Tighten

Brokers Would Have to Put Clients' Interests First

By Andrew Ackerman February 17, 2015

WASHINGTON—Brokers who recommend retirement-account investments would have to put their clients' interests ahead of personal gain under rules expected to be endorsed by the Obama administration as soon as next week.

At present, the brokers' recommendations for 401(k) plans and other retirement accounts generally have to be "suitable," a weaker standard that critics say permits high fees that eat into investors' returns.

A White House announcement of the so-called fiduciary rules is expected to generate significant pushback from Wall Street, which says it already faces robust regulation and warns the rules' likely costs could make it uneconomical for brokers to serve lower-balance accounts. It likely would take several additional months for the Labor Department, which is drafting the rules, to collect public feedback before it can move to implement the rules.

The administration is concerned investors aren't aware that brokers benefit financially by selling products that may not be in a client's best interest but still rise to the lower standard of being suitable investments.

"The current regulatory environment creates perverse incentives that ultimately cost savers billions of dollars a year," Jason Furman, chairman of the White House Council of Economic Advisers and CEA member Betsey Stevenson, wrote in an internal memo last month.

The White House memo argues that investors lose as much as $17 billion annually in retirement dollars—or "at least" 5% to 10% of their retirement savings over 30 years—because of "excessive fees" and "conflicted" advice—amounts disputed by the industry.

"We think the data and studies are less than conclusive and in many cases dated," said Kenneth Bentsen, president and chief executive of the Securities Industry and Financial Markets Association. "It's designed to cast aspersions on the broker model," he added.

The potential for so-called fiduciary rules has triggered debate over the past five years, pitting brokerage firms against investor advocates over the way in which retirement accounts are sold to investors.

The standards, if finalized, could end up cutting into payments brokers and others collect from mutual-fund and insurance companies when they sell plans to retiree clients. Brokers have pushed back against stricter rules, warning they will drive up costs and reduce retirement choices.

The rules are expected to be more flexible than a 2010 proposal the Labor Department withdrew amid an outcry from Wall Street, which complained it would have barred many routine payments to brokers, including commissions.

They won't bar commissions for those who sell retirement investments but would ensure brokers and other financial professionals have an overriding responsibility to keep their clients' best interests when giving financial advice.

The proposal is expected to address what critics view as loopholes in existing law that allow brokers to skirt a fiduciary duty, such as when they only provide one-time, as opposed to ongoing, advice or by saying their recommendations weren't the basis of an investor's decision to buy an investment product. The proposal is also expected to tighten fiduciary rules to advice provided to individuals looking to roll over 401(k)s into individual retirement accounts when they leave a job or retire.

Industry groups and some lawmakers have urged the Labor Department to wait until the Securities and Exchange Commission decides on its own definition of a fiduciary standard for investment advisers and brokers working with mom-and-pop retail investors. The SEC, under the 2010 Dodd-Frank law, gained authority to write such standards but isn't required to do so. The agency's efforts apply broadly to advice about securities like stocks and mutual funds but not to workplace retirement plans.

The SEC has consulted with the Labor Department on the rules, and SEC Chairman Mary Jo White and Labor Secretary Tom Perez have met at least twice to discuss the department's proposal, according to people familiar with the matter.

Labor Department officials declined to spell out details of the proposal. But the measure is expected to soon advance to the White House Office of Management and Budget for review, after which it would be subject to public comment.

—Byron Tau contributed to this article.

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