Pensions&Investments

Labor Department drops brokerage window provisions

By: Darla Mercado
Published: July 30, 2012

The Department of Labor on Monday clarified plan fiduciaries' responsibilities for brokerage windows in 401(k)s, dropping earlier wording that would denote brokerage windows as investments if a certain number of people elected to use them.

The DOL clarified that brokerage windows are not considered designated investment alternatives and that the regulation doesn't prohibit the use of these brokerage accounts. The agency said that plan fiduciaries, however, still have a duty of prudence and loyalty to participants who use the brokerage window — including taking into account the nature and quality of services provided.

Defined contribution plan executives and service providers have been worrying that wording in a May bulletin gave employers more fiduciary responsibility for investments an employee chooses via a brokerage account.

“This is excellent and helpful,” said Marcia Wagner, managing director at The Wagner Law Group. “It looks like the DOL is backing down from its strict requirements promulgated in the prior” bulletin.

“It still correctly maintains that the offering of the window should be held to the fiduciary standards of general prudence, which is reasonable,” she added. “But it clears up that the window in and of itself is not a designated investment alternative.”

“We're grateful to the department for this clarification," said Bob Holcomb, head of legislative and regulatory affairs at J.P. Morgan Retirement Plan Services. "It alleviates some of the concerns sponsors and service providers had.”

Still, just because the most stringent requirements are off the bulletin doesn't mean service providers and employers should rest easy.

Mr. Holcomb added that there is always the “possibility” that the department could revisit the brokerage window issue more formally through the rule-making process. “The important thing is that we follow the standard process where there is a notice of rule making and an opportunity to comment,” Mr. Holcomb said. “We're sill absorbing this, but we're very grateful to the DOL.”

Jason C. Roberts, chief executive of the Pension Resource Institute, agreed the brokerage account provision could resurface down the road.

“I have a sneaking suspicion we'll see something proposed more formally that goes to the issues that the Labor Department thinks are problematic — someone had to have this on their radar screen,” he said.

Mr. Roberts added: "If I were a (service provider), I wouldn't stop the coders or pull the information technology teams off of this yet. I think we'll see some preparation that will continue in case this provision comes back.”

Darla Mercado writes for InvestmentNews, a sister publication of Pensions & Investments.

Original Story Link: http://www.pionline.com/article/20120730/reg/120739987