

Corporate & Financial Weekly Digest

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DOL Finalizes Investment Advice Guidance for 401(k) Type Plans

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The Department of Labor (the DOL) recently issued guidance that clarifies how advisers can provide investment advice to retirement plan participants in a manner that protects both the participant and the provider. The final rule, released by the DOL on October 24, allows investment advisers to provide individualized investment advice to participants in account balance plans, (401(k) plans, profit-sharing plans, and IRAs) if either (i) the advice is provided pursuant to a computer model certified as unbiased and as applying generally accepted investment theories, or (ii) the adviser is compensated on a “level-fee” basis (i.e., fees do not vary based on investments selected by participants).

In adopting the final rule, the DOL was balancing several considerations. For example, the DOL did not want to adopt a rule which might allow advice to be provided by an adviser who could have a conflict of interest. On the other hand, because retirement plan savings are expected to account for such a large portion of Americans’ retirement income, the DOL wanted to ensure that participants have access to quality investment advice so that, among other things, they might be more likely to pay lower fees, engage in less excessive or poorly timed trading, and more adequately diversify their portfolios.

In order to ensure the protection of both the investment advisers and plan participants, reliance on the final rule requires compliance with many conditions. Some of those conditions include:

- requiring that a plan fiduciary (independent of the investment adviser) authorize the advice arrangement;
- satisfying certain recordkeeping requirements;
- mandating that the computer model, if used, must be certified in advance by an independent expert (as well as qualifications and selection procedures for identifying the independent certifying expert);
- ensuring that a “level-fee” investment advice provider does not receive compensation from any party on the basis of investment alternatives selected by participants; and

- completing an independent annual audit of the investment advice arrangement to ensure compliance with the final rule.

The DOL estimates that approximately 134,000 plans covering 17 million participants will offer investment advice to participants pursuant to the final rule, and that approximately 3.5 million participants will actually seek investment advice thereunder. Based on those numbers, the DOL expects the net financial benefit of the final rule to be between \$5 billion and \$13 billion.

The final rule will become effective on December 27, and will be applicable to transactions occurring on or after that date.

The final rule can be found [here](#).

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