
From: BAILEY, LISA [mailto:LISABAILEY2@allstate.com]
Sent: Friday, March 05, 2010 1:00 PM
To: EBSA, E-ORI - EBSA
Subject: Proposed rules on 401k's and IRA's

To the Labor Department,

I would like to document my comments on the attached article involving the proposed rules.

1) Please understand that not all of us are another Bernie Madoff. Some of us are honest, hardworking people who just want to make a difference. As representatives, every one of us has been given a bad name and been grouped together due to those that have not had their clients best interests in mind and worked accordingly. It is already an uphill battle to prove that there are representatives out there with integrity who can be trusted to help clients manage their money. By passing these laws, it gives the impression that not any one representative can ever be trusted to do what is right for their client.

2) *Under the new proposed regulation, the adviser cannot give his personal advice in any circumstance.* Please explain to me as well as any other registered representatives how we are supposed to do our job? Just because we are making a recommendation - based off of a proper asset allocation for the client's risk tolerance, does not mean it is right or wrong. It is an opinion, or recommendation in the eyes of the educated professional who does this job every day. The client at any time can say no. No one is forcing them to comply with that representative. No one forced those who invested with Bernie Madoff to give him their money either. Not to say I am defending Mr. Madoff. However, there is a level of responsibility on both the representative making the recommendation as well as the client in choosing that recommendation and even that representative. By restricting the representatives you are sending the message that the client has absolutely no responsibility in the decisions that he/she has made in the past. This is a slippery path. To follow that path, who is to say that if one should commit a violent crime, why should they be held responsible for that decision to commit the crime? Wasn't is the sole responsibility of the police to prevent it from happening?

Furthermore, to enact these laws would put the existing workforce in this field basically into unemployment. No advice allowed to be given = bad management = no clients = no job. Aren't you supposed to be helping to **decrease** the unemployment rate??

Thank you for your time.

Sincerely,
Lisa A Bailey
Licensed Account Specialist
AFS, LLC
330 726 1696 Ph
330 726 9688 Fax
lisabailey2@allstate.com



March 5, 2010 12:29 PM EST

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March 2, 2010, 12:01 a.m. EST Recommend Post: f t

Advice you can count on?

Financial advisers split on whether proposed 401(k), IRA rules will help or hurt investors

STORY COMMENTS SCREENER (65)

By Robert Powell, MarketWatch

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"The administration gets that people are upset about the conflicts rife within the industry and that, at least in this arena, is trying to raise the bar for good practices," Lynch said.

In the end, Lynch and others think it's possible that plan sponsors -- the companies that sponsor 401(k) firms as opposed to plan providers -- may decide to work only with advisers who are not associated with selling products in any way.

Wohlner and others also said advisers to 401(k) participants should disclose all fees.

"Advisers and their affiliates should be required to disclose all fees and forms of compensation from both giving advice and any other related revenues they make off of the plan," he said. "Full and complete disclosure with no loopholes or exceptions."

New rules on using computer models

Of course, some of the details are devilish and confusing. Take the rule that lets advisers use computer models to give investment advice under certain conditions.

The proposal tightens up the rules on such advice, said C. Frederick Reish, an attorney with Reish & Reicher.

"Under the withdrawn regulation, if an adviser gave advice to a participant, but the participant asked for more advice, the adviser could give his advice, that is, non-computer model advice. Under the new proposed regulation, the adviser cannot give his personal advice in any circumstance."

The rule also says that if an adviser uses a computer model, it needs to be certified as objective and unbiased. But advisers aren't clear on what that means and how it will be enforced.

What's past is past

Likewise, advisers are confused about a proposed provision that disallows the use of historical data.

"Clearly historical data should not be the criteria for fund selection in and of itself," said Wohlner. "But ignoring it totally, or any other aspect of fund data such as expenses, relative risk, risk-adjusted performance, and the like is a mistake. I love index funds, but they are not the right answer in all cases."

Campbell and others agree. "I am very concerned that the Labor Department is considering defining 'generally accepted investment theories' and mandating or prohibiting investment practices," Campbell said.

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First Take

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"Debates over active or passive management, whether to consider past investment performance in the model, and similar matters should be decided by fiduciaries, not the government," he said. "Such unprecedented regulatory micromanagement of fiduciary decision-making would be dangerous, and not in the best interests of participants."

Said Johnston: "I find it frightening that the Labor Department ... took upon themselves to consider and question the value of prior performance before releasing their proposed regulations."

Some say this provision opens up a Pandora's box of problems.

"The proposal is looking to hide past performance of individual funds, opening the door for every failed scheme and Madoff look-alike to get into IRAs and 401(k)s as long as the expenses are low," Harvey said. "This is crazy."

Confusion about IRAs

Another big area of debate and confusion concerns what advisers can and can't do when giving investment advice to IRA owners.

"Of particular importance is the impact the regulations are going to have on brokers who advise IRA rollovers, which is just about any broker who is serving wealth management clients," Trone said. "It seems that a vast majority of brokers will now have to become dually registered if they are going to advise either qualified pension plans or IRA rollovers." Dually registered advisers are registered both with the Financial Industry Regulatory Authority and the Securities and Exchange Commission.

Are new rules needed?


Meanwhile, there are those who suggest that there's no or little need for new rules. According to David Wray, head of the Profit Sharing/401(k) Council of America, there's a model, often called the SunAmerica model, that has been widely adopted and which is available today to more than 20 million participants. That model lets brokers give advice to 401(k) participants under certain conditions.

To view the Notice of Proposed Rulemaking on Investment Advice and the final rule on multi-employer disclosure, visit this site.

To view the White House Middle Class Task Force Report, the background for the Labor Department's proposed rules, visit this site.

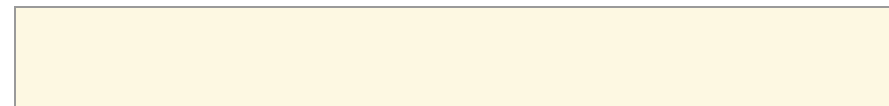
By the way, the Labor Department is seeking comments on its proposed rules. Written comments on the investment advice proposal should be addressed to the Office of Regulations and Interpretation, Employee Benefits Security Administration, Room N-5665, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, D.C. 20210, Attn: 2010 Investment Advice Proposed Rule. The public also may submit comments electronically by email e-ORI@dol.gov or through the federal e-rulemaking portal at this site, http://www.regulations.gov.

Robert Powell has been a journalist covering personal-finance issues for more than 20 years, writing and editing for publications such as The Wall Street Journal, the Financial Times, and Mutual Fund Market News. Powell is the editor of Retirement Weekly. Learn more about Retirement Weekly at this Web site . ■

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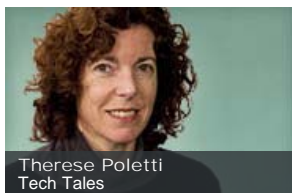
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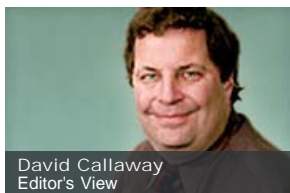
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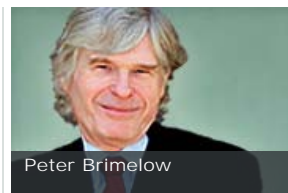
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