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DOL Fiduciary Redraft Has "Left the Station."

Confirmation of Tom Perez as new Labor secretary will not hamper fiduciary reproposal, industry officials say

The confirmation of Assistant Attorney General Tom Perez as secretary for the Department of Labor on Thursday will not hinder the DOL's release of its fiduciary reproposal, which the Department says will come in October.

The Senate confirmed Perez by a vote of 54-46, making him the only Latino in President Barack Obama's cabinet.

The ultimate compliance goal is to help ensure that everyone associated with an advisory firm acts ethically at all times. Advisors and RIAs should do the right thing, even when regulators are not looking over their shoulders.

Registration Requirements for Investment Advisor Representatives (IARs)

When individuals launch an advisory firm, they must avoid marketing themselves or the firm as investment advisors before they are properly approved and registered. Otherwise, they are subject to severe penalties.

Despite recent attempts by lawmakers — and those in the industry — to stymie the DOL's re-release of its fiduciary rule, the DOL's Employee Benefits Security Administration's Semiannual Regulatory Agenda, released July 3, states that a reproposal to amend the definition of fiduciary under the Employee Retirement Income Security Act (ERISA) will come in October.

Fred Reish, partner and chairman of the financial services ERISA team at Drinker Biddle & Reath, says the DOL's controversial fiduciary plan could become a "point of contention" in letters from lawmakers or any potential upcoming hearings that Congress may have with Perez. But DOL's fiduciary "train has left the station."

Reish expects the DOL's fiduciary redraft to be at the Office of Management and Budget in the next few weeks.

The next step will be "to see the proposed regulation and the related proposed prohibited transaction exemptions," Reish says. "If the DOL has responded to the most important concerns of the private sector, then the reproposal could be less controversial than contemplated."

Robert Lewis, vice president of legislative affairs for the Financial Services Institute, agrees that Perez's confirmation will not change DOL's fiduciary course. "DOL has been moving forward [on its fiduciary plan] most of the year with an acting secretary," he says. "We do not expect anything to change with the confirmation today."

FSI, which has been a staunch opponent of DOL's fiduciary plan, said in a statement that it "looks forward to working with [Perez] in the future, especially as his department moves forward on their

rule redefining the definition of ‘fiduciary.’”

FSI said that it was “certain” that Perez “shares our concerns about small investor access to financial advice” under the DOL’s fiduciary reproposal, and that FSI was “eager to work with him to protect middle-class Americans.”

EBSA head Phyllis Borzi has been saying for some time that a rerelease of the proposed rule would come this fall.

But in the last couple of months, lawmakers have been pushing legislation to halt those efforts. First came the Retail Investor Protection Act, a bill introduced by Rep. Ann Wagner, R-Mo., which passed the House Financial Services Committee in mid-June by a 44-13 vote. The bill would require that the DOL wait to repropose its fiduciary rule until 60 days after the SEC issues its fiduciary proposal. The bill advanced to the House Education and Workforce Committee.

Borzi said in mid-June that she would not wait until after the SEC published its rule to release DOL’s.

Then in early July, Sen. Orrin Hatch, R-Utah, introduced legislation that would return oversight of IRAs to the Treasury Department— stripping that oversight from DOL.

DOL has received significant pushback regarding its plan to include IRAs in its rule to amend the definition of fiduciary under the Employee Retirement Income Security Act (ERISA), with the most notable complaint being that advisors would lose their ability to earn commissions on IRA advice.

But it’s unlikely either of those bills will receive any traction before October.