Industry Sound-Off: The Fiduciary Rule

Thoughts from Supporters & Opponents

By now, you've likely heard that the finalized fiduciary/conflict of interest rule was released. *We summarized this game changing regulation in our April 2016 Newsletter.* Most important to note, it was designed to protect investors and consumers of financial advice by legally requiring advisors to put their client's best interest ahead of their own.

Since the original proposal in 2010, there have been strong proponents and adamant opponents to the Department of Labor's proposed rule. The proposal has traveled a bumpy road of comment periods and revisions to craft the rule that is now law. In its final state, however, it is not immune from backlash and multiple interpretations. Now that the rule has been revised and finalized to reflect prior comments, what are industry professionals saying?

Thoughts from the Industry - Supporters & Opponents

The Supporters

A majority of supporters feel that the finalized Fiduciary Rule:

- ☑ Requires advisors to put their client's best interest ahead of their own
- ☑ Includes major changes proposed by industry professionals

The final version of the fiduciary rule is a culmination of good intentions, vehement criticism, thousands of comments, and multiple revisions. To the delight of many industry professionals, the DOL's final rule includes a good amount of changes that were pushed for.

Brian Graff, CEO of the American Retirement Association, considers the final rule's "level-to-level" exemption a massive win, as he explained to attendees at the National Association of Plan Advisors' annual conference in April. The level-to-level exemption allows advisors to roll over client assets from an employer-sponsored plan to an IRA, charging a level fee, as long as the advisor conveys that they are acting in a fiduciary capacity, in the best interest of the client, and not receiving compensation beyond their level-set fee. While he does not consider the rule to be the perfect, Graff is happy that the DOL came around on several other issues including loosening and clarifying rules governing participant education and allowing exemptions for advisors to small 401(k) plans.[1]

While Graff feels that the final rule is still in need of tweaking, other industry professionals are giving the DOL glowing praise for their efforts. Professor and Director of the Center for Retirement Research at Boston College, Alicia Munnell considers the revised rule to be a great victory for consumers and applauds the dedicated efforts of

[1] Armstrong, David. Fiduciary Rule Takes Center Stage in Nashville. WealthManagement.com. 18 April 2016.

the DOL. “The net result of this complicated rule is that retirement savers will get better advice, because it will be driven by fiduciary concerns rather than by incentives to put customers in expensive products. These changes will be important for those who opt for brokerage accounts in 401(k) plans, for those considering rollovers from 401(k)s to IRAs, and for those making ongoing investment decisions in IRAs. It’s a good day!”[2]

Matthew Ramer, Principal and Financial Advisor at MOR Wealth Management, does not simply give the regulation a thumbs up, he’s putting his thumbs, fingers, and toes up. "The only problem with this rule is that it *only* provides new guidance for retirement accounts. When I explain to clients what the new rule is, they are horrified that the new rule is 'new’.”[3]

Even in his glowing review, Mr. Ramer alludes to a theme that many others seem to agree with. The fiduciary regulation is a great step in the right direction, but it isn’t the full solution. As Morningstar’s Director of Policy Research, Scott Cooley, explains, “although the revisions to the fiduciary rule are welcome, there is still much that the Labor Department can do to improve the retirement outcomes of Americans.” He emphasizes a need for the Department to ensure assets stay in 401(k) plans when participants switch jobs and to address the coverage gaps in 401(k)s.[4]

The Opponents

A majority of opponents feel that the finalized Fiduciary Rule:

- ☒ Hurts those it claims to protect
- ☒ Divides consumers into who can afford financial advice and who cannot

While a world where everyone agrees on rules and regulations would be wonderful, that is not the world we live in. During its road of revision, the fiduciary rule has been met with fervent opposition. While some, such as Graff, see an opportunity to work with the DOL and further improve the legislation, others are working to strike it down completely.

In the weeks prior to the final rule’s reveal, Speaker of the House Paul Ryan climbed the ranks as one of the most vocal opponents of the fiduciary rule, referring to it as “Obamacare for financial planning”. On April 28th, the House voted 234-183 in favor of passing Resolution 88, the bill introduced by GOP lawmakers under the Congressional Review Act to block the DOL’s fiduciary rule. After the House passed *Protecting Access to Affordable Retirement Advice*, introduced by Reps. Ann Wagner (R-MO), Phil Roe (R-TN), and Charles Boustany (R-LA), Speaker Ryan proclaimed that “bureaucrats in Washington, D.C. have no business getting between you and your financial planner. But

[2] Munnell, Alicia. The ‘fiduciary rule’ is a great victory for retirement savers. MarketWatch. 20 April 2016.
[3] Advisers evaluate the DOL fiduciary rule - Matthew Ramer. Investment News. 11 April 2016.
[4] Cooley, Scott. Fiduciary Rule Better Protects Investor Interests. Morningstar. 26 April 2016.

that's what the Obama administration's fiduciary rule does." Rep. Wagner reiterated Ryan's sentiments and continued by comparing the final rule to Obamacare for retirement savings, "only hurting those it claims to protect: low- and middle-income families who are looking to responsibly save for retirement in the midst of a savings crisis."

Certain House Representatives see the fiduciary rule as a regulation that ultimately forces investors into two classes, those who can afford help in saving and those who cannot. At a press briefing, Speaker Ryan explained, "We all want to make sure that people get sound advice to save for the future. This is not that. This fiduciary rule is not that. This is Washington coming in and imposing all kinds of artificial rules and limits. It is total Washington overkill. Through the Congressional Review Act, we can directly reject costly regulations, and that is how we are going to try and stop this fiduciary rule."[5]

The Senate has not yet acted on Resolution 88, but President Obama has vowed to veto the resolution if it passes.

The Bottom Line

Regardless of the opinions of a few, this game changing regulation has the ability to change the retirement future of many. These opinions matter because they are far-reaching & guide the interpretation of the rule.

This is not the last you'll hear about the fiduciary rule. As always, only time will tell its fate.

[5] Speaker Ryan Press Office. Energy, Fiduciary Rule, Jobs, Opioid Abuse: The House at Work. Paul Ryan Speaker of the House. 21 April 2016.