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DOL's Fiduciary Rule: There's Still Time to Get It Right

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The intense debate over efforts by the Department of Labor (DOL) to implement a fiduciary standard for investment advice in the retirement market demonstrates once again that the road to bad policy can be paved with good intentions.

The Investment Company Institute (ICI) and others in the financial services industry agree with the underlying principle behind the fiduciary standard: financial advisers should act in the best interests of their clients.

Regrettably, DOL's proposal adds on top of that principle many complex, burdensome, and prescriptive rules that render the current version unworkable. The result could undermine the financial security of millions of workers and families planning and saving for retirement.

DOL is at a critical juncture in its work—hosting extensive hearings on the issue in the coming days. The hearings provide an opportunity to refocus on core fiduciary principles and lay out a workable set of rules that will benefit, not harm, America's retirement savers. There is still time to get this right—and the mutual fund industry stands ready to work with the administration and Congress to do just that.

To do so, DOL must revise its proposal to apply fiduciary status to financial advisers only when they operate in a genuine relationship of trust and confidence.

Fiduciary status entails one of the highest obligations known to law—and carries with it significant responsibilities. When Congress passed the Employee Retirement Income Security Act (ERISA) in 1974, it did not intend to prevent retirement investors from accessing information about investments.

Investors seek out information and education through various means, including call centers, walk-in centers, and websites. These basic interactions are not advisory relationships and should not be subject to ERISA's fiduciary definition. Unless DOL clarifies its proposal, many providers will have no choice but to stop offering them and retirement savers will lose access to valuable information and guidance.

The DOL implicitly acknowledges the negative consequences of its proposal by including potential exemptions to narrow the overly broad application of fiduciary status. To avoid those quite foreseeable consequences and write a final rule that is workable and appropriate, DOL must also greatly simplify the exemptions included in its proposal.

The most sweeping of DOL's exemptions is called the best interest contract (BIC) exemption, primarily intended to let brokers continue to receive commissions for the advice they provide. Unfortunately, there's a wide gap between intentions and implementation. The current proposal's multitude of impractical conditions render the BIC exemption useless.

ICI strongly supports a "best interest" standard that applies to all investors, including those in ERISA plans and individual retirement accounts (IRAs). However, the DOL's rule proposal could significantly restrict the ability of retirement investors—in particular, low- and middle-income investors—to receive any of the personalized assistance they need to make informed choices. In pursuit of its goal, the DOL could actually limit their access to critical information.

We can avoid this harmful outcome. The DOL must greatly simplify this exemption and expand the scope of its coverage. As a first step, it should eliminate the proposed contracts required of firms, and streamline required disclosures so they are not cumbersome for firms and are comprehensible for savers. Similarly, the exemption should be expanded to cover advice provided to all small employers. There is no reason to exclude small plan sponsors from access to important information.

Failure to make these changes will render the final rule redundant, granular, and costly—and will expose firms to significant new litigation risk while limiting choice for investors nationwide.

DOL is also exploring a puzzling and troublesome streamlined exemption for “high-quality, low-fee” investment options, although they have not given details on how such an exemption would work, or what investments might qualify.

ICI has grave concerns about the feasibility and wisdom of such an exemption. Previous DOL rulemakings acknowledge that cost should not and cannot be the sole factor in making investment decisions. And there are no simple metrics for identifying objectively which investment options are “high quality” and which are not. It would be impossible for the rule to establish criteria that would take into account the diverse needs of American retirement savers.

Working toward a fiduciary standard rule is an enormous undertaking. But we’ve got to get this right. If we continue along the course presently charted by the DOL, the rule will set back retirement preparedness by damaging savers’ access to the guidance, products, and services millions of Americans need to reach their retirement goals.

We cannot let this happen. And it need not happen—if the DOL listens to the many constructive suggestions it’s received and works with us and others to develop a workable final rule.

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