

## Fiduciary *focus*



### Fiduciary Focus: DOL Fiduciary Rule: What's Next?

BY SARAH PARKER

President Trump requested a review of the Department of Labor's (DOL) Fiduciary Rule shortly after assuming office. The rule, originally introduced in 2016, was first pushed back to an implementation date of January 1, 2018; followed by a second extension of July 1, 2019. Before the most recent implementation date could take effect, the Fifth Circuit Court of Appeals determined on March 15th "unreasonableness" of the rule's administration and that the DOL "overreached" with its mission. The court believed the DOL was attempting to enforce undo power over the financial industry.

#### What Was the Goal of the Fiduciary Rule?

The goal was to protect investors from financial guidance that was not in their best interest. The genesis was to also expand the definition of a fiduciary under the Employee Retirement Income Security Act of 1975 (ERISA). The DOL's definition of a fiduciary demanded that advisors act in the best interests of their clients and put their clients' interests above their own. The hopeful outcome was that financial salespersons (brokers, agents, etc.) that work with retirement plans would either change the type of accounts advised or begin to adhere to fiduciary standards through their completion of a "Best Interest Contract (BIC)" with their clients. A 2015 report by the White House Council of Economic Advisers found that biased advice drained \$17 billion a year from retirement accounts (see below for a sample representation). The rule would have likely eliminated some commission structures that govern the industry. Retirement plans included in the rule were defined contribution plans, defined benefit plans, and individual retirement accounts (e.g., IRAs).



*Administrative fees excluded from example.*

Enforcements and the administrations burdened the rule. Many supported the premise of the rule (i.e., conflicted advice likely depletes retirement savings), but not necessarily the enforcer or the completion of the “Best Interest Contracts (BIC).” The 1,023 page rule was commonly criticized for the estimated amount of paper required for the BIC compliance.

### **What Happens Next?**

It is up to the DOL to make the next move. They can appeal the Court’s decision to the entire Fifth Circuit (called an En Banc Appeal), appeal to the U.S. Supreme Court, or start over. If no move is made to appeal by April 30th, it will likely be vacated. The following Monday after the court decision (Monday, March 19th) the DOL told CNBC that “pending further review” it “will not be enforcing the 2016 fiduciary rule.” It is also likely that the industry may see a new version of the rule alongside another regulatory body, such as the SEC.

### **RESA**

In the meantime, other legislation to assist the retirement industry is gaining traction, notably The Retirement Enhancement and Savings Act (RESA). RESA was actually formed in 2016 and came out of the Senate Finance Committee, but never made it through the various bodies. The author of RESA is the assistant secretary of the DOL and head of the Employee Benefits Security Administration (EBSA). RESA addresses many pieces of the retirement plan industry, but most notably multiple-employer retirement plans (MEPs) and lifetime income in participant-directed plans. RESA will optimistically make it easier for smaller employers to join forces to offer attractive retirement plans and set standards and disclosures on illustrating lifetime income. It also includes guidance and safe harbor options for lifetime income investment options.

### **What Does This Mean If I’m a Plan Sponsor? If I’m a Participant?**

As the industry waits for appeals, revisions, and possibly new legislation, Hartland recommends Plan Sponsors continue to adhere to the highest fiduciary standards, which include monitoring all service providers and their fees. Fee reasonableness should continue to be a top priority for the industry. For participants and individual investors, be aware of the advice provided. Ask your current advice provider if the guidance provided is conflicted, what are their fees, and how are they collected. Consider hiring a “fee-only” advisor.

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