Fiduciary Commentary

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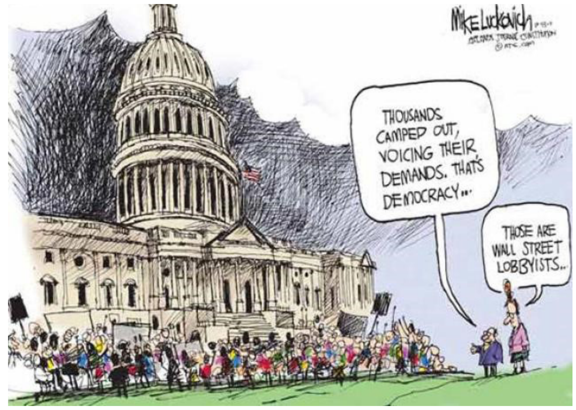
Fiduciary Rule's Opponents Unite



The DOL's controversial advice regulation has provoked intense debate in the industry and rallied to action those whose financial interests are threatened by the law. The recently updated 40-year old fiduciary standard seeks to broaden the definition of a fiduciary under ERISA to elevate the standards of care in handling retirement accounts. This law is arguably the most transformative financial regulation seen in decades, perhaps since ERISA itself. At stake is the very foundation of Wall Street's business model and promises to forever change the financial advice industry.

Financial industry trade groups (representing Wall Street brokerages and the insurance industry) have rallied against the regulation that seeks to require the interests of investors come first, before their own. Clearly, the affected parties face significant risks to their profitability if the law moves forward. Organizations that have most aggressively opposed the new DOL regulation have spent heavily on lobbying to kill the DOL's rule, far outpacing those supporting the regulations. By some estimates upwards of $50 million was spent to defeat the law versus only $5 million by those supporting it. But the enormity of the spending by its detractors was not enough to derail the DOL's long-standing attempt to elevate retirement advice standards and eliminate conflicted advice.

This law will require sizable investments in compliance, technology, training, compensation practices, and even modifications to financial products to comply with the new rules. The DOL had originally estimated implementation costs of up to $1.1 billion, however this figure falls significantly below industry estimates. Firms continue to work with legal representatives and consultants to comprehend how the new advice rule will affect them, their clients, and their brokers. Brokerages that currently operate under the lower threshold suitability standard for brokering financial products will be among those most affected and will require the most significant adjustments to their businesses. Several organizations have begun to put a price on the cost of compliance with the new law. Among them, Ameriprise Financial, Inc. an organization with 10,000 advisors has cited expenses of $7 million in Q2 alone on "DOL planning and implementation". Insurers are also incurring similar expenses and additional costs to restructure insurance products to comply with the new rule.

The industry cites that the new law adversely affects retirement savers. Brokers and insurers have claimed that the regulation would stifle investors' access to affordable financial advice and prevent the development of much needed savings plans. However, skeptics are doubtful that a void would remain for long in the hyper-competitive financial service market, as providers willing to comply with new regulations scramble to fill the void left by organizations unwilling or unable to comply with the conflict-free advice regulations.

Those fighting to evade fiduciary responsibility have now taken more drastic measures in an apparent last-ditch attempt to kill the law and protect their profits. In June, a group of plaintiffs including trade groups representing Wall Street financial firms and insurers, filed a lawsuit in the US District Court to overturn the DOL's new rule. The suit asks that the rule be thrown out by the court and the DOL be prevented from implementing or enforcing it. Plaintiffs argue the DOL has improperly impeded upon the jurisdiction of the SEC, FINRA and state insurance regulators and the law undermines the interests of investors.

Labor Secretary Perez expressed confidence that the rule would survive the legal challenges and that most advisors have already put their clients' best interest first and are very well positioned to meet the terms of the new law. Perez further articulated his support for the law stating that "The department's Conflict of Interest rule is built upon solid statutory and legal foundations, and we will defend it vigorously."

Despite the financial industry's best efforts, the fiduciary rule is moving forward as planned. According to a 2015 White House report, the aggregate economic cost of conflicted advice is $17 billion per year. Witnessing Wall Street's Hail-Mary attempts to maintain a regulatory environment that permits them to evade fiduciary responsibility is maddening! In fact, it's difficult to see this for anything other than what it is… a desperate and shameless attempt by Wall Street to protect their profits at the expense of ordinary investors. Good riddance!

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