EMPYRION™

WEALTH MANAGEMENT

LOCAL FIRM, NATIONAL PROMINENCE

Issue #4 • Volume 13

The Monthly E-Newsletter

Kimberly Foss, CFP®, CPWA®
PRESIDENT
Empyrion Wealth Management

April 4, 2017

What Is—and Is Not—at Stake with Changes in the Fiduciary Rule

The flurry of executive orders that President Trump signed during his first days in office made quite a few headlines. One that may have failed to make the radar screen for many Americans was the order he signed on February 3, 2017, affecting the implementation of a rule in the Department of Labor (DOL) that is commonly known as "the fiduciary rule." But if President Trump's action on the fiduciary rule was a minor event in some sectors, in the financial advising and investment industry, it was banner headline material.

To put it in simple terms, the fiduciary rule would require any financial professional who offers investment planning or advice to persons with retirement accounts to be held to the fiduciary standard, which requires these advisors to always act "in the client's best interest." The Obama administration had previously enacted the rule and mandated its implementation beginning in April 2017. When the former administration took this action, it set off a storm of protest in many parts of the financial service and investment industry.

Why? Because previously, the fiduciary standard only applied to financial advisors who charge a fee—either periodically or as a percentage of assets under management—for providing ongoing service and advice to clients. The Obama administration's action would expand that standard to anyone who makes a recommendation or solicitation affecting a retirement account. This would include stockbrokers, insurance agents, mutual fund representatives, and other financial professionals who are compensated by receiving commissions on the products they sell.

Now, you may be asking yourself, "What's wrong with requiring the fiduciary standard for everybody? Shouldn't anyone who is giving investment advice be required to have the client's best interests at heart?" The answer is that previously, individuals compensated by commission were required only to demonstrate that their recommendations were "suitable" for clients, according to their objectives and needs. Suitability is a much lower bar than the fiduciary standard, which requires, among other things, that any commissions, fees, or other costs of investing in a particular product or account must be fully revealed to the client, in writing and with specific dollar amounts shown. Further, any potential conflicts of interest between the advisor and the client—such as higher commissions paid for selling one product over another—must be disclosed.

So, when the Obama administration proposed extending the fiduciary standard to anyone offering products or services to retirement accounts, many in the financial industry—including many very recognizable corporate names from Wall Street—protested loud and long. Their complaints centered primarily on the extra levels of regulation that were being imposed, the expense of maintaining compliance with the stricter standard, and, in some cases, the harm done to smaller investors who might not be able to afford fee-based investment advice, which can be more expensive and difficult to obtain for those with smaller pools of assets to invest.

In fact, Vanguard Funds, one of the largest no-load mutual fund companies in the nation, filed comments with the DOL on March 20, 2017, requesting that the government push back the scheduled implementation of the fiduciary rule from its planned target date of April 10, 2017, to sometime twelve to eighteen months from now, in order to "complete a full review and revision."

The executive order signed by President Trump on February 3 of this year halted the planned phased-in implementation of the fiduciary rule for 180 days, to allow time for further study and "economic and legal analysis." But Vanguard's assertion is that much more time is needed in order to avoid "a piecemeal approach" that could have "unintended consequences" for investors "due to the complexity of the rule." As Vanguard CEO Bill McNabb wrote in his letter accompanying the comments, " ... we want regulations as far-reaching as the Rule to be well-crafted and thoughtfully implemented to limit investor confusion, disruption, and cost."

Without question, this is a complex issue that affects millions of investors. In fact, a 2015 report by the White House Council of Economic Advisers concluded that biased advice cost retirement accounts as much as $17 billion each year. On the other hand, it is likely that if the rule is implemented more widely, the costs of compliance will rise for many financial industry businesses, especially for broker-dealers who have been operating under the less stringent "suitability" standard.

As a way of eliminating the regulatory uncertainty around the fate of the proposed DOL rule, many firms have announced their intention to comply with the higher standard, regardless of whether or not the fiduciary rule is enacted as proposed by the Obama administration. This could be beneficial to many consumers if such efforts result in greater transparency and better advising and planning tools, the stated intention of many firms who plan to undertake the changes needed for compliance. Further, many industry professionals believe that all the public debate and controversy surrounding the issue has already effectively created a prejudice in favor of the fiduciary standard in the minds of many investors. In other words, broker-dealers and others who cannot tell clients that they are required to act in the investor's best interest may find it more difficult to attract and retain business.

One very important thing that the proposed change in this DOL rule does not alter is the ongoing commitment of this firm to offer advice and investment products that place our clients' interests and needs ahead of everything else. As Certified Financial PlannersÂ® and Registered Investment Advisors, we adhere, as we always have, to the requirement that investors must receive investment and financial planning advice that puts their needs first. So, whether or not the fiduciary standard is expanded, we will continue to operate as fiduciaries, according to this higher criterion. We believe that putting our clients' interests first is the only right way to do business.

Stay Diversified, Stay the Course!

Kimberly Foss, CFPÂ®, CPWAÂ®
Empyrion Wealth Management, Inc.
www.empyrionwealth.com
(916) 786-7626
(800) 787-7634

For more information on Empyrion Wealth Management, visit www.empyrionwealth.com.

To learn more about Kimberly Foss, visit www.kimberlyfoss.com.