Anecdotal Evidence: Trump and the DOL Rule

By Kerry Pechter *Thu, Nov 10, 2016*

'Would the financial services industry want to return to square one after spending millions of dollars to reconfigure their compliance systems and products' for the DOL conflict of interest rule?' asks ERISA expert Jason Roberts.

In the new president-elect, we have a national leader who believes that none of the ordinary rules, traditions or protocols apply to him—whose chief legal advisor once shut down the George Washington Bridge for spite and whose chief political advisor once shut down the federal government for reasons I can't remember.

So it's impossible to predict what might happen in the realm of retirement policy next year. Yesterday, a lot of people wondered about the future of the Department of Labor's conflict-of-interest rule. Excellent question. I assumed that the newly sworn-in president would reverse all of his predecessor's major accomplishments, including Obamacare, the Iran nuclear deal and, when he becomes aware of it, the fiduciary rule.

If that happens, we have at the very least a giant sunk cost. A whole new industry sprang up around the rule since last spring, as dozens of firms spent countless dollars and hours fighting it and then figuring out how to comply with it. Phyllis Borzi and her team most of the last eight years on either the DOL rule or health care.

A sudden reversal of the rule would likely whiplash those firms that have created special technology solutions to help firms comply with the data-gathering and reporting requirements of the rule. This week, eMoney Advisor introduced a "Fiduciary Framework" for advisors and Broadridge Financial Solutions announced a new DOL Fiduciary Standard solution for broker-dealers.

At least one ERISA attorney thinks the DOL rule won't die, at least not right away. Jason C. Roberts, CEO of the Pension Research Institute, wrote on LinkedIn yesterday:

"It will probably take several months or longer for the new administration and Congress to organize. President-elect Trump may not even have a Labor Secretary on board by April 10th. The Senate must first approve all key political appointees sent up to Capitol Hill by the new President.

"Even with one party in control of Congress, the review process for nominations to the various federal agencies and Cabinet could take some time. It's also unlikely that the new administration could put the DOL rule on hold, since it was adopted last April and became effective last June (although the compliance dates are next year).

“The new Congress can start over again and try and overturn the DOL rule through the legislative process, but this is often a time-consuming process, even if both houses of Congress are controlled by the same party. There’s also the question of whether the financial services industry would want to return to square one after spending millions of dollars to reconfigure their compliance systems and products as we draw closer to the 2017 deadline.”

On NAPANet, attorney and former PLANSPONSOR editor Nevin Adams wrote, “Though candidate Trump never specifically addressed the fiduciary regulation, he has consistently spoken of his intention to reduce the reach of government regulations, and it seems reasonable to think that he’d see the fiduciary regulation in that light.

“Lending credence to that sense are the recent comments by Anthony Scaramucci, managing partner of Skybridge Capital, and an adviser to the Trump campaign, who recently criticized the regulation as an example of government overreach that would divert too much capital into low-cost passive ETFs and index funds.

“‘We’re going to repeal it,” Scaramucci was quoted as saying by *InvestmentNews* on the sidelines of the Securities Enforcement Forum in Washington last month. [Scaramucci compared the rule to the Dred Scott decision of 1857, which affirmed the right of slave owners to take their slaves into the western territories of the U.S.]

“Nor would it be all that hard for the Trump administration to do so. American Retirement Association CEO Brian Graff notes that one possible approach would be to issue an executive order indicating no enforcement of the rule while going through the administrative procedure process of actually repealing it.”

He and many others would welcome the death of the rule. It would make traditional business models viable again. It could also relieve downward pressure on fees, revive the fortunes of active fund managers, remove restrictions on soliciting rollovers from plan participants, and allow a return to the incentives that wholesalers have paid to broker-dealers and to insurance marketing organizations, and that distributors paid to advisors, brokers and agents. Higher profit margins all around could lead to a renaissance of new product development.

The DOL rule isn’t the only part of retirement policy that the election’s outcome will affect.

With control of the presidency, the legislature and the Supreme Court, Republicans can move to privatize Social Security, provide a safer safe harbor for deferred income annuities in 401(k) plans, and perhaps fight the establishment of state-sponsored defined contribution plans. The president-to-be may decide to replace Federal Reserve chairman Janet Yellen, whom he criticized during the campaign for suppressing rates to help the Democrats. One certainty is that Sen. Elizabeth Warren won't have a public policy role in the executive branch.

Then there's the matter of taxes. Unlike Mr. Obama, the next president will probably have little appetite for raising the amount of income subject to FICA taxes or capping the tax expenditure on retirement savings. (For speculation about the future of interest rates, see today's *RIJ* cover story.)

Interest rates could depend on how the president-elect decides to frame the U.S. national debt. At the time of the country's founding, opinion on the Revolutionary War debt was split into two major camps. Many people regarded the debt as a dangerous liability and an obstacle to growth. Alexander Hamilton took the opposite position, reframing it as an asset—every liability is somebody's asset—and supporting its value by guaranteeing interest payments and establishing open market operations. Paradoxically, he produced America's first wealth effect.

During the election campaign, the president-to-be talked about negotiating a deal with U.S. creditors to pay down the debt at a reasonable cost to the country. That would be the anti-Hamilton path. He also talked about spending trillions of dollars in deficit spending on the military and on infrastructure. That would increase the debt. But we can't count on history to help predict what Mr. Trump will do, because he doesn't seem to think that history, customs or even laws apply to him.