DOL Hears Public Comments on Fiduciary Rule (Again)

By Kerry Pechter *Thu, Mar 9, 2017*

Brokers and insurance agents told the Department of Labor to kill the fiduciary rule, but robo-advisors such as Financial Engines and Betterment still favored it, as did private citizens, in over 200 comments on the DOL website this week.

It’s Groundhog Day all over again. A year after the fiduciary can-of-worms appeared closed forever, the Trump victory re-opened it. Opposing parties are again rehashing the pros and cons of the Department of Labor’s 2016 conflict-of-interest rule. Once again, we’re debating whether the distribution of financial products is over- or under-regulated.

Spoiler Alert: Consumers and robo-advice companies tend to like the rule as it stands. Broker-dealers and insurance product distributors hope that the rule joins socialism in history’s dustbin.

As of noon yesterday, 215 individuals or firms had submitted comments to the Department of Labor’s **website** regarding the DOL’s proposal to delay the applicability date of the “fiduciary rule” so that it can reassess the rule in light of the Trump administration’s objectives.

The comments fall into three familiar categories. Distributors of financial products almost universally hate the rule. They resent the implication that they are not already serving clients responsibly, and they credit commissioned sales—which are more difficult under the rule—with providing an incentive to serve middle-class clients.

“I have been in the insurance business selling fixed annuities with no market risk for 40 years, selling IRAs, never had a complaint,” wrote Richard Dysart of San Diego. “Most of my clients are of a modest income and will not pay a fee to an adviser.

“The reps selling variable annuities and securities are exposing their clients to more risk,” he added. “Keep licensed agents who sell only fixed products out of these rules. Our state insurance commissioners are all ready doing a good job of weeding out the few bad apples.”

In the same vein, Henry D’Alberto of Easton, Pa., wrote: “We are a small business in Pennsylvania with a total of four employees. My father started our company in 1991 and I would like to continue running our family business if possible. We have a total of 13 registered representatives (brokers) who have almost 200 years of experience in the securities business.

We have never had an official customer complaint and only one disclosure from FINRA over the past 25 years. If this conflict of interest rule goes through as written we will almost surely have to sell our firm and join a much larger group because we cannot afford all of the compliance costs and don't have the expertise needed to properly follow the rule as it is written.

"We believe it is too burdensome in order to properly operate which will hinder our ability to focus on our customers' needs and wants. We are extremely worried about the potential litigation that could arise from this law dealing with the BICE contract (we are not lawyers and do not have lawyers on staff). In discussing the rule with current clients they don't really understand why the government is getting so involved with their retirement savings and they continue to ask me if they can continue to work with me."

But Financial Engines and Betterment, two firms that provide automated investment advice to 401(k) participants and individual investors, defended the existing fiduciary rule. Financial Engines rebutted the claim that the rule will deprive middle-income savers of access to financial services.

"We believe the Conflict of Interest Rule or a similar regulation is workable for investment advisors and beneficial for investors," wrote Chris Jones, Financial Engines' chief investment officer. "Our business model and market experience are proof that technology can help investment advisors profitably offer high-quality, unconflicted advice to investors, even those with modest account balances."

Jon Stein, founder and CEO of Betterment, wrote: The fiduciary rule is necessary to ensure that Americans receive investment advice that is in their own interests, instead of conflicted sales pitches for high-fee products.

"For years, the financial industry has put its own interests first, costing investors billions of dollars. The fiduciary rule, which is currently slated to go into effect on April 10, would change that. We believe that any delay would needlessly perpetuate conflicted advice at investors' expense."

As for comments from citizens, Carman Kazanzas of Henderson, Nevada wrote, "As a retiree I want to know I can trust a financial advisor to put my needs above his or her profit. Do not delay this protection any longer. Do not take us back to the years where greed trumped everything."

Similarly, "It shouldn't be difficult for me to know I am getting sound advice from a trusted advisor rather than a salesman," wrote Betty Skivanek of Allentown, Pa. "Many investment advisor firms have already changed their models to reduce conflicts of interest in light of the original rule. We should not interrupt these positive developments by delaying the rule."