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Questions DOL Needs to Answer

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Questions DOL Needs to Answer

▶ The Department of Labor’s proposed fiduciary rule will have wide-ranging repercussions in the insurance world.

By Craig Lemoine

We put on our backpacks in 2008, navigated the Dodd-Frank Act and used a collective walking stick in 2010 when the U.S. Securities and Exchange Commission held hearings about adopting a fiduciary standard.

Five years later, our regulatory journey has coincided with the river of more than 10,000 baby boomers retiring every day. This critical juncture of a major regulatory shift with a tremendous influx of retirees has led the Department of Labor to propose an industry-changing conflict of interest rule that, if implemented, would have repercussions that will be felt throughout the retirement planning world.

The proposed rule expands the fiduciary protections currently extended to employees covered by employer pension funds to include individual retirement account and 401(k) plan holders. It also could cover investment or withdrawal advice given to IRA owners and other retirement plan participants. This expansion of a fiduciary standard will include a broad swath of financial service professionals who are not currently required to hold to a fiduciary standard. Broker/dealers and their registered representatives, as well as insurance agents, would be considered fiduciaries if they provide allocation or account distribution advice to an IRA account participant.

The proposed rule will fundamentally change the way brokerage and insurance companies interact with consumers in retirement planning settings. Advice and products that previously were held to a less stringent suitability standard now will be viewed through a more sharply focused fiduciary lens. The intention is to better protect consumers and to address the dramatic expansion of traditional, Roth and rollover IRA dollars resulting from the initial application of the Employee Retirement Income Security Act in the 1970s and 1980s. Additional justification for the new rule stems from consumers’ inability to distinguish between a financial

advisor, who currently holds a fiduciary duty, and a broker or agent, who may or may not.

The rule may fundamentally change the role of insurance agents working with retirees. This rule would require an insurance agent to hold to a fiduciary standard for both their underlying insurer and their retiree customer. Having two masters opens the door to further questions and clarifications; it also opens the door to a legitimate fear of increased agency costs and possible litigation.

We recently commented on the proposed rule and asked the DOL to clarify certain expectations. These questions must be answered before the department moves forward with implementation.

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1. Is the fiduciary standard a proxy for product fees and expenses? Will preference be given to exchange-traded funds and passive investment vehicles over actively managed funds?

2. Does the DOL consider investment and insurance products with lower fees superior to those with higher fees? Are other factors (performance, experience, financial strength, management) considered in meeting a fiduciary standard?

3. What is the relationship between insured retirement income products (such as fixed and deferred annuities, mutual funds, and money market instruments) and the underlying financial strength of the offering company?

Assume a retiree is in good health and requires guaranteed income. Their primary source of investable assets is an IRA. If an AAA-rated insurer can generate an annual guaranteed inflation-adjusted income stream of \$40 for every \$1,000 invested and a B-rated insurer can generate \$60 for every \$1,000 invested, would both meet a fiduciary standard of care?

4. Surrender charges provide disincentives for consumers to liquidate an

investment or insurance product within a short time frame. These disincentives can increase performance by allowing an insurer or investment company to choose less-liquid products and increase yields. Will products with surrender charges be permitted under the best-interest contract exemption? Will a preference be given to investment and insurance products without surrender charges?

5. Has a rigorous rules-based standard (similar to FINRA Rule 2111) been evaluated as a mechanism for reducing excessive IRA costs and fees?

6. How will arbitration occur between advisors and consumers? Who will bear the cost of this type of arbitration? Will arbitrating an agency/principal standard be cost-prohibitive for financial service firms that work mostly with middle- and low-income consumers?

7. Raising the cost of doing business may disenfranchise some IRA owners from working with financial service professionals. Are robo-advisors better positioned to help low- and middle-income Americans than financial service professionals currently operating under a suitability standard of care?

8. How will lower- and middle-income Americans learn to use automated tools if they are not working with financial service professionals?

How can insurance agents meet potential fiduciary standards of care? What type of education and compliance programs will we need to implement if this rule is enforced? Which organizations are best suited to strike a balance between consumer security and industry interests?

Now is the time to gear up and get prepared for the new DOL decisions, which could be implemented as early as next spring. We will need your voice and your continued support on what is sure to be a long and winding road. [in](#)

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