



NAPA

National Association of Plan Advisors

Part of the American Retirement Association



NTSA

National Tax-Deferred Savings Association

Part of the American Retirement Association

The DOL Fiduciary Rule: What's Next?

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DOL Regulation Scope & Scale

- Impacts ERISA covered plans & **Individual Retirement Accounts**
- Applies to 34 Act, 40 Act and Insurance Products
- Retroactive to millions of arrangements

The DOL Case for Regulation



- Individual investors incur \$17 billion annually in excess fees
- Excess fees reduce retirement savings by up to 30%
- The existing regulatory framework permits “conflicted” advice

The DOL Case for Regulation

- Department of Labor has statutory authority to interpret regulations under ERISA and the Code
- Special tax benefits and annual tax expenditure justify federal government action
- DOL is the only regulator that can affect 34 Act, 40 Act and Insurance Product investments

The DOL Case for Regulation

- Agreement that investments should not benefit advisors more than clients
- No compelling arguments made against a best interest standard
- Proposal is simple and far less intrusive than actions taken in other countries
- The real issue is how to operationalize the standard

The Path to Final Regulation

- DOL hearings completed
- Review and second comment period likely to close prior to September 15th
- Labor Secretary Perez has stated DOL intent to issue a final regulation
- Final rule most likely to be published prior to May 1st, 2016



The Path to Final Regulation

- White House has made the issue a priority
- Will Congress get involved?
- Other options available within the process

So what's the likelihood there will be a new DOL rule and when will the rule be in effect?

The New Rule Simply Stated

- Fiduciary standard of care is based upon two key parts
 - Place the client's interests first
 - Eliminate conflicts of interest (“COI”)

Fiduciary Duty in Practice

- Requirements of the fiduciary standard of care
 - Practice with skill, care and prudence
 - Implement procedures to eliminate conflicts

So What's the Rub?

- Prudence → Cost
- Conflict → Compensation
- Enforcement?

How Advisors Will Adjust

- Head for safer harbors
 - Migrate to all fee-based business
- Transition away from less profitable accounts
- Hourly rate for advice related to income products



Easier to Do than Undo

- Proposed rule will cover all future activity on all ERISA covered plans and Individual Retirement Accounts
- Best practice will likely be to amend all existing contracts and agreements
- Transition all business to new practices

What About the BICE?

- Proposed exemption for third party compensation “commission”
- Establishes process for continuing a commission based advisory model
- Risk and cost of compliance seem to far outweigh potential reward

Industry does agree that BICE is not workable in its current form

Impact in Macro-Waves

- Brokerage firms consolidate due to increased operating costs
- Outlook for proprietary products TBD
- Emphasis on fees causes shift in models
 - Passive investing
 - Robo advisers



American Retirement Association Position

- Level compensation arrangements should be permitted without regard to the source
- Advisors must be allowed to provide rollover advice
- Education is critical to successful outcomes and not a fiduciary act
- Eliminate roadblocks for small business plans
- Minimum 24 month transition period

Level to Level Exemption

- Place the client's interests first
 - Act with skill, care and prudence
- Eliminate conflicts of interest
 - Compensation does not change based upon investment option selected / recommended
- Compensation is commensurate with services provided
 - No artificial limits based upon prior arrangements

Get Ready

- Everyone will be an ERISA fiduciary
 - Increase your knowledge now
- Review your practice
 - Segment your client base
 - Map your revenue stream
 - Talk to your partners
- Pay attention



Questions?