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Submitter Information

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General Comment

I am a financial advisor with a mid-sized regional brokerage firm. I have been an advisor for 12 years and the vast majority of my clients have a liquid net worth under $250,000. I am writing today in favor of the proposed delay to the implementation of the "Fiduciary Rule", while it is reviewed and modified to the mutual benefit of clients and advisors.

Let me state that I support a fiduciary standard for financial advisors. When dealing with people's financial futures, we should be held to the highest standard. That said, the current rule will have grave unintended consequences, in my opinion.

First, many clients will end up paying more for advice then previously. I know, this has been the industry straw man, but there is much truth to the claim. The reality of financial advice is that many clients do not require extensive, on-going advice. In these situations, a straight-forward commission for implementation of a plan is appropriate. Changes would only have to be made infrequently, if ever, and usually only if there is a major life disruption. This type of arrangement may cost a $100,000 client around $3,000-$4,000. They are essentially paying for all future advice and guidance up-front. Under the current DOL rule, however, many firms are going to fee-based accounts that charge an on-going percentage (typically 1-1.5%) of assets for "on-going advice". The same $100,000 retirement client could end up paying $20,000+ over a typical retirement lifespan. Is that really better for them? Even worse, advisors in that situation may feel the need to "do something" to justify their fee, and that can lead to over-trading or miss allocation of assets. Activity is generally the long-term enemy of results.

The second unintended consequence is related to the personal liability placed on advisors under the current rule. While there should absolutely be penalties for malfeasance, opening firms and advisors to class-action lawsuits is disastrous--not just for the firms, but for the clients the rule is intended to protect. We are a very litigious society. The fear of ambulance-chasing lawyers suing firms and advisors will lead to neutered, very conservative advice, not out of a sense of responsibility, but out of fear. If the goal of this rule is to protect the client's retirement future, this will not help. If an advisor is fearful that they may be sued by an unhappy client during down markets, they may advise those clients to invest more conservatively than reasonable based on circumstances. For example, a 55-year retiring in 10 years and then looking at a 20+ year retirement should have a allocation of around 50% stocks/50% bonds (this is a very simple example). If the advisor is fearful of losses and being sued, however, he may advise a more conservative portfolio of 30%stocks/70% bonds. While the client may never get upset during a bear market, the damage done by this decision is FAR MORE costly than any commission or fee to manage the account. The lost return is impossible to recover and depending on the initial investment could cost tens to hundreds of thousands of dollars.

I will conclude that I like the idea of a fiduciary standard, but believe there are better ways to implement it. Don't force specific options by favoring fee-based or fee-only solutions. Don't encourage group-think and overly conservative planning by allowing ambulance-chasing lawsuits. Trying to determine if advice was good or bad is far too dependent on timing and emotion. Focus instead on true fraud, i.e. Bernie Madoff. Focus on requiring advisors to have advanced certificates like the CFP--this alone would eliminate many of the bad actors in the industry. Absolutely the clients need to be protected, but let us exercise some common sense. The average American needs retirement advice more than ever--don't force them to be shut out by onerous regulation. Thank you.