

From: [Ron Palastro](#)
To: [FiduciaryRuleExamination - EBSA](#)
Subject: RIN 1210-AB82
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Attachments: [image001.png](#)

The applicability date of the Fiduciary Rule should be delayed until April 10, 2019 and the DOL should extend the comment period an additional 30 days for responses to the remaining questions in the RFI.

1. Investors are well protected by existing regulatory structures.
 - a. The sale of retirement savings products is already heavily regulated.
 - b. The SEC regulates my firm through its antifraud authority in the Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act), and certain Exchange Act rules. ^[1] It similarly regulates investment advisers through the Investment Advisers Act of 1940 and related regulations. ^[2]
 - c. My firm and financial advisors are also subject to FINRA rules, oversight, and frequent examinations. ^[3]
 - d. FINRA rules require my firm to commit to observe just and equitable principles of trade and high standards of commercial honor. ^[4] In addition, my firm is obligated to disclose certain material conflicts of interest to your customers, and federal securities laws and FINRA rules strictly prohibit my firm from participating in certain transactions that may present acute potential conflicts of interest. ^[5]

2. Investors are further protected by the application of the Impartial Conduct Standards.
 - a. During the transition period from June 9, 2017, through January 1, 2018, financial advisors are relying on the Best Interest Contract Exemption (BICE) and must adhere to the Fiduciary Rule's Impartial Conduct Standards.
 - b. These Impartial Conduct Standards require advisors to provide advice in the retirement investors' best interest, charge no more than reasonable compensation for their services and to avoid misleading statements.
 - c. Investors are already benefitting from stronger protections since the Fiduciary Rule became partly applicable on June 9, 2017.
 - i. The DOL acknowledges as much saying in the supporting release to the final rule extending the applicability date that the Impartial Conduct Standards help "ensure that investment recommendations are not driven by adviser conflicts, but by the best interest of the retirement investor" and that much of harm the DOL claims is happening to investors "could be avoided through the imposition of fiduciary status and adherence to basic fiduciary norms, particularly including the Impartial Conduct Standards." ^[6]
 - d. As a result, any harm to investors caused by further delay of the additional requirements is greatly reduced by the application of the Fiduciary Rule's Impartial Conduct Standards and my firm's compliance with it.

3. Investor access to retirement planning services can be preserved by cutting the costs

associated with the Fiduciary Rule.

- a. The DOL's Regulatory Impact Analysis (RIA) estimated costs for large firms to be \$5 million to start and \$2 million per year thereafter with medium-sized firms incurring 13.3% the cost to large firms and small firms incurring 4.8% the cost to large firms.
- b. The RIA identified four areas of compliance costs for firms:
 - i. Firm costs
 - ii. Errors & Omissions Insurance
 - iii. Switching/Training Costs
 - iv. Additional PTE/Exemption Costs
- c. Complying with the BICE requirements results in a certain fixed cost per account. With fee based revenue limited by the small account size, the fixed cost of servicing the account will exceed revenue that will be earned and your firm will therefore need to only offer them robo-investing type advice or ask them to move their accounts elsewhere.
- d. While the definition of a small investor varies among firms, the general estimate is that the break-even point for servicing an investment account ranges from \$35,000 to \$75,000 in assets. [7]
- e. Since the median IRA balance has ranged from \$23,785 to \$33,185 between 2010 and 2014, it is clear that without significant changes the Fiduciary Rule will have a devastating impact on investor access to retirement planning services. [8]

4. New Product Innovations Are Necessary and Need More Time

- a. The DOL has discussed the potential of new product innovations that may allow firms to achieve compliance with the fiduciary rule at a lower cost to firms and investors.
- b. However, these new innovative products take time to develop and become available. Your firm is concerned they will not be available in time for the January 1 applicability date.
- c. For example, American Funds, Janus and Columbia Threadneedle are reported to be developing "clean" shares [9] of their mutual funds. [10]
- d. Once they are fully developed, your firm will need to integrate the necessary trading, surveillance, commission and other systems to support their use.
- e. Financial advisors will also need to be trained on the use of the new shares and the new corresponding policies and procedures. Your supervision staff will need to be trained on proper supervision of the sales. All of this training will need to be developed before it can take place.

5. Failure to delay will result in client confusion.

- a. A delay during the pendency of the DOL's review will serve to minimize market disruptions caused by the changing regulatory structure.
- b. As a result of the Fiduciary Rule, my firm is reviewing investment products and compensation structures and planning revisions designed to make it easier to comply with the Fiduciary Rule.
- c. My firm is thinking about revising minimum account balances in advisory accounts and consumers' access to retirement planning services will be limited by these

changes as investors with low account balances are moved to different account types.

- d. A delay will allow my firm to avoid communicating one set of compliance policies, account minimums and other changes to investors that will have to be revised as a result of the possible changes to the final rule.
 - e. The average client will be confused by correspondence announcing changes to their investment products and business relationship (if the Rule becomes applicable), followed by correspondence announcing additional changes being made for yet another new regulatory scheme (if the Rule is rescinded or revised).
6. An extension of the comment period for the RFI is needed to ensure meaningful input from stakeholders.
- a. The 30-day comment period will significantly impact stakeholders' ability to gather meaningful data that is responsive to the remaining questions in the RFI.
 - b. The DOL should extend the comment period for questions 2 through 18 to 60 days so that commenters are afforded sufficient time to gather evidence and respond to the RFI in a meaningful way.

7. Conclusion

- a. Existing regulatory structures and the June 9, 2017 application of the Impartial Conduct Standards provide substantial investor protections.
- b. The full application of the current Fiduciary Rule will greatly increase costs for my firm and to financial advisors in general and will result in reduced access to retirement planning services.
- c. It is essential for the DOL to consider whether new products can eliminate or reduce negative consequences.
- d. Financial advisors will need to communicate with existing clients well in advance of the deadline so a significant delay can avoid investor confusion by eliminating the need for financial advisors to send multiple communications reflecting changing requirements.
- e. The DOL should delay full implementation of the Fiduciary Rule until April 10, 2019 to provide the industry the full 36 months it said at the outset was necessary to fully comply.
- f. The DOL should extend the comment period for questions 2 through 18 of the RFI to allow firms and other interested parties sufficient time to gather useful data to craft a meaningful response to the request.

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[1] U.S. SECURITIES AND EXCHANGE COMMISSION, STUDY ON INVESTMENT ADVISERS AND BROKER-DEALERS at iii (Jan. 2011), available at <https://www.sec.gov/news/studies/2011/913studyfinal.pdf>.

[2] *Id.*

[3] See U.S. SECURITIES AND EXCHANGE COMMISSION, GUIDE TO BROKER-DEALER REGISTRATION (Apr. 2008) <http://www.sec.gov/divisions/marketreg/bdguide.htm>; U.S. Securities and Exchange Commission, Study on Investment Advisers and Broker-Dealers (Jan. 2011), available at <https://www.sec.gov/news/studies/2011/913studyfinal.pdf>.

[4] See U.S. SECURITIES AND EXCHANGE COMMISSION, STUDY ON INVESTMENT ADVISERS AND BROKER-DEALERS at iii (Jan. 2011), available at <https://www.sec.gov/news/studies/2011/913studyfinal.pdf>.

[5] See, e.g. FINRA Rule 5121(a), (f)(5).

[6] Definition of the Term "Fiduciary", 82 Fed. Reg. 16903, 16,905 (April 7, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-04-07/pdf/2017-06914.pdf>.

[7] *Id.*

[8] "Individual Retirement Account Balances, Contributions, Withdrawals, and Asset Allocation Longitudinal Results 2010-2014: The EBRI IRA Database" (January 17, 2017) available at https://www.ebri.org/pdf/briefspdf/EBRI_IB_429_IRA-Long.17Jan17.pdf.

[9] As described in a 2017 SEC staff interpretive letter, clean shares are a class of shares of a mutual fund without any front-end load, deferred sales charge, or other asset-based fee for sales or distributions. See Capital Group, SEC Staff Letter (Jan. 11, 2017), www.sec.gov/divisions/investment/noaction/2017/capital-group-011117-22d.htm.

[10] Greg Iacurci, Investment News, "In new fiduciary rule FAQs, DOL gives quasi-endorsement of clean shares" (May 23, 2017) available at <http://www.investmentnews.com/article/20170523/FREE/170529973/in-new-fiduciary-rule-faqs-dol-gives-quasi-endorsement-of-clean>.