From: Raul Elizalde
To: FiduciaryRuleExamination - EBSA
Subject: DOL Rule
Date: Thursday, July 20, 2017 2:51:56 PM
Attachments: image001.png

Hello –

Thank you for seeking public comment on the DOL rule. The text below is mostly in response to question #3, but also includes opinion on other questions, such as question #11 (see the last paragraph below).

The DOL rule is based on the worthwhile goal of preventing non-fiduciaries from giving "imprudent and disloyal advice; steer plans and IRA owners to investments based on their own, rather than their customers' financial interests; and act on conflicts of interest in ways that would be prohibited if the same persons were fiduciaries." The need of protecting the savings of hard-working Americans from unreasonably high and opaque fees or unsuitable products is clear. There is much documented abuse, and a regulatory framework is needed to reduce it.

Alas, the resulting DOL rule in its current form is very complex. Many layers of disclosures are unlikely to protect the public, who has grown numb to the endless and often incomprehensible legalese of financial contracts. Witness the complexity of variable annuity contracts that can run for dozens of pages of dense text. They leave investors befuddled and confused, and serve little purpose other than discharging liability from the annuity provider and whoever is selling it.

The DOL rule has also created confusion among financial professionals such as myself on the best way of preparing for it and complying, even though I am a fiduciary-standard RIA.

It might be more appropriate and simpler to just prohibit certain practices from taking place in retirement portfolios.

For example, why not simply forbid anyone from selling to retirement accounts

- derivative or leveraged products (such as structured products, where there usually is important counterparty and liquidity risks, or inverse or leveraged ETFs, where there is important market risk)
- non-exchange traded products (such as annuities and non-traded REITs, where there is counterparty and liquidity risk)
- all products that carry incentives to the broker who sells them, thus conflicting with a retiree's objectives (such as broker-sponsored mutual funds, high-commission annuities, or funds that pay trailing fees to the financial professional who sells them)
- any other product carrying a total of upfront plus back-ended commissions above a reasonable threshold, which could be defined in further guidance more precisely.

Those investors who still want to purchase any of these instruments can do so through a brokerage account. Anyone older than 59 ½ can take his or her IRA's funds and deploy them as they see fit,

subject to tax considerations. Or these prohibitions could be made to apply only to accounts belonging to savers whose net liquid worth falls below a certain threshold.

The initial proposal of the DOL rule, back in 2015, included a list of assets that effectively precluded the inclusion of non-traded REITs, but that list was unfortunately abandoned. Allowing indexed annuities in retirement accounts further waters down the noble intent of the rule. Restating an asset list could go a long way to simplify compliance and implementation of a consumer-protection rule.

As stated previously, no amount of disclosure can replace common-sense regulatory investor protection. In my state, for example, we require people to wear seat belts instead of making them sign multi-page disclosures detailing the risks of not wearing them. This is common sense.

One objection often heard is that small accounts will suffer if any restrictions are placed on commission-based financial professionals. This is not borne by the facts.

Very rarely would the help of a stockbroker be absolutely essential to help managing a $50,000 account. There are many simpler options. Limiting the scope of investment options, prohibiting expensive products, or limiting commission charges would not prevent retirees from obtaining basic investment help.

For example, many discount brokers are willing to open IRA accounts for as little as $1,000, and offer basic, no-trailing-fee, highly liquid, exchange-traded investments such as stock-market-indexed ETFs, bond-market-index ETFs, and short-government-bond ETFs. These instruments have very low management fees, low (and in some cases, zero) transaction fees, and can be easily liquidated for cash. This is more than enough to build a 60/40 portfolio with the help of a telephone representative. Alternatively, financial planners can be hired by the hour to establish basic investment plans.

I suggest that as you consider the future of the DOL Rule you may want to avoid throwing away the proverbial baby with the bathwater. The DOL Rule may not be a panacea, but curbing serious abuse through sensible regulation should remain a priority.

Finally, given that Registered Investment Advisors act as fiduciaries for retirement AND non-retirement accounts already, this rule or any revised rule should explicitly exempt all RIAs from any procedural or disclosure requirements arising from the rule. To my knowledge, RIAs are not explicitly exempt anywhere in the current text, even though as fiduciaries they are effectively compliant with all aspects of the rule's intention.

Sincerely,

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