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New FiduciaryPath Survey: DOL Fiduciary Rule Does Not Cost Investors More or Limit Investor Access to Advice or Products; Intermediaries Expect Higher Retirement AUA



Kathleen McBride – 03 Aug 2017 15:07

Financial professionals who work with investors every day are ready for – and many already abide by – the fiduciary standard. Registered Investment Advisers, of course, already do so. And, in contrast to what some financial industry groups or firms have said, providing advice that is in the best interest of investors does not cost investors more, or leave investors without advice, products, or services, according to findings of the 2017 FP Fiduciary Standard Survey from FiduciaryPath.

Since 2010, the Fiduciary Survey has periodically asked financial professionals who provide advice to investors for their candid views on fiduciary topics. The survey seeks input from all intermediaries providing advice across the various registration and licensing types and compensation models. The goal is to understand their attitudes about the fiduciary standard, how they incorporate it into their practices, how they prepare for new regulations, which ways their firms support them, how they are compensated and whether new rules may change how they work with clients.

This is the 5th survey of financial professionals who advise investors, across the spectrum of business models. This year, 777 financial professionals from the categories below provided their views on 44 questions from March 24 to June 2nd. We appreciate their time and candor. We analyze the survey data in three ways: overall views across all respondents, by registration/license category, and by compensation model. Survey respondents include Registered Investment Advisors/Investment Advisor Representatives, Broker-Dealer Registered Representatives, Dual Registrants (RIA/IAR-Registered Rep), Dual Registrants with Insurance License (Dual+Insurance), and Insurance Professionals (Producers and Consultants).

A Brief History of the Fiduciary Discussion

To put this in context, for years, the investment industry has been migrating toward fiduciary advice. Of course, RIA firms have been providing fiduciary advice and investment management to clients for decades. But for the last two decades, financial services firms have blurred the lines between advice from a fiduciary and sales of financial products to investors. Titles, advertising and the appearance of “advice” have contributed to a very high level of investor confusion about the basis on which they are working with their financial professional.

This year, a number of regulatory, legal and professional initiatives are converging in ways that will likely affect culture, processes, compensation and investor outcomes for a long time. Regardless of what happens on the regulatory front, these efforts are accelerating the change the landscape of the advisory profession and advice to investors.

Several entities have proposed or finalized strong fiduciary regulation, law or professional requirements: Department of Labor’s Conflict of Interest – Fiduciary Rule (DOL RULE); CFP Board’s proposed new professional standard; CFA Institute’s support of titles reform; and Nevada’s new Fiduciary Rule are all prime examples.

A slow evolution toward fiduciary advice became more acute after the latest financial and banking crash. It got a boost in 2009 when the Obama Administration Treasury Dept. issued its Blueprint for Financial Reform. Dodd-Frank pushed further in 2010, requiring the SEC to explore extending to brokers a fiduciary standard “no less stringent than” the Investment Advisers Act of 1940. But SEC did not act on extending the fiduciary standard to brokers under its authority under Dodd-Frank, or requiring ‘40 Act Investment Advisor registration of all who provide advice and recommendations to investors, even though the Financial Planning Association won a lawsuit years ago mandating that SEC enforce the ‘40 Act for brokers providing advice.

It should be noted that SEC does not have jurisdiction over retirement investing or many insurance products.

DOL first proposed an updated Fiduciary Rule in 2010, then withdrew that proposal, conducted years of research and economic analysis, and proposed the Conflict of Interest – Fiduciary Rule in 2015. The Final DOL Conflict of Interest - Fiduciary Rule was effective in 2016. A grace period for firms to comply brought the applicability dates out to April 2017 and January 2018. The new Administration delayed the DOL Rule, but its fiduciary provisions of the DOL Rule are now applicable, since June 9th, with additional provisions

slated to apply in January. Portions of the DOL Rule are under review under the new Administration's regulation cutting efforts.

So far, this year:

- DOL's Fiduciary Rule (Impartial Conduct Standard) became applicable on June 9th, with the additional provisions applicable January 1.
- Multiple Courts ruled that the DOL was within its jurisdiction and authority to propose the Fiduciary Rule, opining that the cost to the industry does not outweigh the need for this rule and its benefits to the public, noting that it is in the public interest to implement it without delay. Some Court's rulings are under appeal.
- CFP Board has requested comments on a proposed new professional standard that would require CFP certificants to act in clients' best interests *at all times*.
- CFA Institute has written a letter to SEC suggesting title reform in which certain titles that convey a relationship of trust and confidence would apply to only to fiduciaries.
- Nevada has passed new law requiring investment/financial advice and financial planning to be provided on a fiduciary basis.

First Look: Findings of the 2017 FP Fiduciary Survey

With this robust discussion as a backdrop, we present the first look at findings of 2017 FP Fiduciary Standard Survey. A full report of findings will be available later this year.

Cost, Products, Advice

Some financial services lobby groups have opined that advice in the investor's best interest is more costly to the investor, or that fiduciary advice would diminish investor access to advice or products. Survey responses have thoroughly contradicted those arguments throughout the five surveys we have conducted.

So, let us be clear: **Survey findings indicate that fiduciary advice, in the investor's best interest, does not cost investors more than sales recommendations from non-fiduciaries.**

A conflicted sales recommendation not in the investor's best interest is not advice. So, it's a stretch to assert that investors would lose access to advice, since non-fiduciaries were not all providing actual advice before the DOL Rule. Many non-fiduciary firms have had high minimum asset levels and did not provide advisory services to investors at asset levels under the mid-six figures or millions of dollars in assets..

Further, access to advice from a fiduciary is available to all investors. Many already-fiduciary RIA firms charge a flat fee or an hourly fee to advise investors of any asset level. This writer has observed firms making strides to expand the the planning and advisory services they provide on a fiduciary basis to higher-net-worth individuals to investors at all levels of wealth. For investors who simply want an asset allocation tailored to their goals, online automated investing is another viable, very low-cost option.

But not all investors need -- or want -- advice. For investors who want to self-direct retirement accounts, and don't want advice, costs at online brokers have decreased to as little as \$4.95 per trade in the run-up to the DOL Rule, and there is nothing in the DOL Rule that says every investor must obtain advice from a fiduciary -- any investor is free to self-direct their own investments. In a nutshell, the DOL Fiduciary Rule says that when advice is provided, it must be in the investor's best interest. There's no prohibition for investors seeking a self-directed solution -- there's only the benefit that the cost of that is declining, along with the cost of products that can be utilized to fulfill fiduciary responsibilities.

Does it Cost Investors More for Fiduciary Advice?

The DOL Fiduciary Rule does not prohibit any product that is in the investor's best interest. However, products that are not in the investor's best interest will be less likely to be recommended as the DOL Rule rolls out -- because they are not in the investor's best interest. Many product providers have rolled out reasonable cost products to be used by financial professionals to fulfill their fiduciary responsibilities and comply with the DOL Rule.

Responses to this year's survey are consistent with prior years' survey responses:

Nearly three-quarters of respondents say it does not cost more to work with fiduciary advisors. The survey asked: **"Do you believe it costs investors more to work with fiduciary advisors than brokers when all costs to the investor (not only the advisor's compensation) are considered?"**

73% No

27% Yes

Products and Services

Survey respondents say a fiduciary duty for brokers who provide advice would not reduce product or service availability for investors. The survey asked, **"Do you believe a fiduciary duty for brokers who provide advice would reduce product and service availability for investors?"**

57% No

43% Yes

Again this year, a number of comments from respondents who answered "yes," note that recommendations of products that are harmful to investors would likely be reduced, since they are not in the investor's best interest.

Advisors Expect Retirement Investor, Plan AUA to Increase or Remain Steady

The 2017 survey was in the field before the DOL Rule's June 9 applicability date, and we specifically geared some questions to gauge attitudes with regard to services to investors before and once the DOL Fiduciary

Rule was in effect. To get a baseline, the survey asked: **“What types of retirement clients do you serve? (check all that apply)”**

87% of respondents serve investors with IRAs

71% serve plan participants

66% serve qualified plans

ERISA Assets Under Advisement

Assets under advisement for *individual* clients in ERISA retirement accounts, IRAs or other accounts subject to the DOL Fiduciary Rule comprise 51% or more of total AUA for 47% of respondents.

Another 20% indicate these assets comprise 31% to 50% of their AUA. Under the final DOL Fiduciary Rule, IRA assets themselves are subject to a '40 Act fiduciary duty, but advice on the decision to rollover of a 401(k) plan is subject to the more stringent ERISA Fiduciary Standard. Advice on that, to-roll-out, or not-to-roll-out, decision, must be prudent, in the investor's best interest, not misleading and at a reasonable cost.

Advice to ERISA *plans* comprises more than 50% of the AUA for 31% of respondents: more than 75% of AUA for 18% of respondents and from 51% to 75% of AUA for 12% of respondents.

Eight out of ten financial professionals expect their AUA in accounts subject to the DOL Fiduciary Rule to increase or stay the same. The number of respondents that expect their assets to increase is equal to the number of respondents that expect their AUA to stay the same: to be specific, 26% expect an increase in *qualified retirement assets*, and 15% expect *IRA rollover assets* to increase, while 40% expect those assets to stay roughly the same.

Only 4% of respondents expect a decrease in IRA rollover assets and 2% expect a decrease in qualified retirement assets.

Overall

Going forward, do you expect the percentage of the assets under your advisement in accounts subject to the DOL Rule to change?

25.7% Yes, I expect an increase qualified retirement assets

14.8% Yes, I expect an increase IRA rollover assets

2.4% No, I expect a decrease in qualified retirement assets

4.4% No, I expect a decrease in IRA rollover assets

40.2% No, I expect all will stay roughly the same

11.8% Don't know

10.7% don't provide advice on retirement assets

Analyzing this data by compensation model, **most fee-only respondents, 87%, expect AUA subject to the DOL Rule to stay the same or increase.** More than 35% expect DOL Rule AUA to increase: 21% expect an increase in qualified retirement assets and 14% anticipate expect IRA rollover assets to increase, while 52% in the fee-only model expect retirement AUA to remain at the same level.

Similarly, 78% of respondents in the fee/commission model expect their AUA under the DOL Rule to remain the same or increase. Most, 49% of respondents, expect increased AUA under the DOL Rule: 34% of expect an increase in qualified retirement AUA and 15% expect to see an increase in IRA rollover AUA, while 29% expect their AUA subject to the DOL Rule to remain the same. Another 7% expect a decrease in IRA rollover assets and 4% expect a decrease in qualified retirement assets.

Most commission-only compensation respondents, 48%, expect their AUA under the DOL Rule to stay the same or increase. In this group, 20% expect an increase in AUA: 12% expect IRA rollover AUA to increase, and 8% predict qualified retirement assets to increase, while 28% expect AUA subject to the DOL Rule to remain the same. And, 12% of commission-only respondents expect a decrease in IRA rollover assets.

But there is more uncertainty among commission-only intermediaries: 40% indicate they don't know if their AUA subject to the DOL Rule will increase or decrease. There was uncertainty over the Rule's future during the Administration's delay from Feb 3 to June 9, and since commission-only intermediaries' firms may have had to make adjustments with regard to compensation, in order to comply, there may have been more uncertainty at firms where compensation is typically via commissions.

The survey probed further: **“If you answered “No, I expect a decrease in qualified retirement or IRA assets” to the prior question, “Do you expect to stop providing advice on certain assets as a result of the DOL Rule?”** Most respondents, as discussed above, expect retirement AUA to increase or remain roughly the same.

Fewer than 3% of all respondents expect a decrease in qualified retirement assets, and fewer than 3% say they will stop providing advice on qualified retirement assets.

Just over 4% overall expect a decrease in IRA rollover assets, but just over 2% say they will stop providing advice on IRA rollover assets.

More than 22% of all respondents say the DOL Rule will have no effect on the types of assets on which they provide advice, and 68% say N/A.

These findings lead us to conclude that the DOL Fiduciary Rule will not impede investor access to advice and investment products. Fiduciary advice to investors, including retirement investors does not cost more than non-fiduciary recommendations, and according to survey respondents, often will cost less, all-in, and include more services.

More to come...

There's a lot more to report on findings of The FP 2017 Fiduciary Standard Survey. We will report findings about how firms and financial professionals are preparing to comply the Fiduciary Rule, including changes to practices and compensation, in our next article, Part 2. A full report of findings will be available later this year.

FiduciaryPath, LLC (FP) would like to thank the financial professionals who responded with candid answers and comments for the 2017 survey. We would also like to thank our Media Partner, Advisor Perspectives, and the many firms and groups that have invited members to participate in this year's survey.

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