Consumer Federation of America

May 18, 2015

Dear Senator:

Small broker-dealers and insurance agents have been hearing ominous predictions from their trade associations for years about the consequences of a Department of Labor (DOL) rule proposal that would require them to meet the fiduciary standard of serving their clients' best interests when providing retirement investment advice. So it is not surprising that they are worried. The truth is, however, that the rule the DOL has proposed is very different from what they have been led to expect and will allow them to continue to serve their clients while earning sales-based compensation and selling from a limited menu of investment products. This approach will benefit retirement savers, the many advisors who already seek to serve their customers' best interests, and product sponsors that compete on the quality and cost of their investment options.

The DOL rule proposal would close loopholes in the definition of investment advice that have allowed broker-dealers and insurance agents to escape the fiduciary duty under the Employee Retirement Income Security Act (ERISA) when offering advice to retirement savers. At the same time, however, DOL has proposed exemptions that will allow these advisors to continue to maintain their sales-based business model subject to appropriate restrictions.

- They will have to enter into a contract with customers in which they promise to obey the law and provide advice that is in the best interest of the customer.
- They will have to charge reasonable fees for their services.
- They will have to take concrete steps to minimize conflicts of interest associated with their business model.
- They will have to provide point-of-sale and on-going disclosure regarding the cost of their services and the investments they recommend.

The same trade associations that previously sold these small advisors on the message that they wouldn't be able to charge commissions at all are now telling them that they won't be able to meet these reasonable compliance obligations. Their new predictions have no more factual basis than their earlier misinformation about restrictions on commission compensation. Indeed, small advisors that choose to offer a menu of high-quality, reasonably priced investment options will see relatively little impact from the rule. For example, contrary to the fear mongering they've heard from their trade associations:

- Advisors will remain free to recommend variable annuities, so long as the recommendation is in the best interest of the investor and the fees are reasonable. Annuities are on the list of financial assets advisors can recommend when relying on the best interest contract exemption.
- Advisors will be free to sell from a limited menu of products, including a menu of products made up exclusively of proprietary products. When they do, they will simply have to notify their customers of this limitation on their services, ensure that the investment menu is sufficiently broad to allow them to meet their best interest obligation to recommend a diversified portfolio, and ensure that any fees charged do not exceed the fair value of services provided.
- Advisors who sell products with high fees will still be able to comply with the rule by rebating excess fees to the customer.
- Advisors will not be at risk of being sued just because an investment they recommend performs poorly. The rule proposal clearly states that the best interest determination is based on the conditions prevailing at the time the recommendation is made, not its ultimate outcome. Where disputes do arise, existing FINRA policy with regard to pre-dispute binding arbitration clauses will continue to apply.

In short, those broker-dealers and insurance agents who charge reasonable fees for recommendations that serve their customers' best interests will see relatively little impact from the rule, and could in fact benefit from a leveling of the playing field. Those whose business is built around the recommendation of high-cost, low-quality investment options will be forced to make a more dramatic adjustment, and appropriately so. Perhaps the biggest impact will be on product sponsors who, instead of competing on the quality and cost of their investment options, currently compete by compensating advisors more generously. They will have to either adjust or risk losing market share, and that too is an appropriate outcome of the rule.

Retirement savers deserve investment advice that will help them achieve a secure and independent retirement. The DOL rule proposal helps to achieve that goal while providing sufficient flexibility for advisors operating under a variety of business models to comply. It deserves all our strong support.

Respectfully submitted,

Barbara Roper

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