



Hathaway
Financial
Services



The DOL Rule

On April 6th, 2016, after a long and arduous process, the Department of Labor (DOL) enacted a fiduciary rule that raises investment advice standards for all retirement accounts. This is the most significant piece of legislation to affect retirement advice in decades. The ruling is for ERISA-covered plans, which covers most retirement plans, and all IRAs. Brokerage and retail accounts will not be covered under this rule. The rule is currently scheduled to take effect April 2017 through January 2018.

Why is this important? Currently, there are two different standards in the financial services industry: the suitability standard and the fiduciary standard. Advisors who operate under a fiduciary standard put their clients' best interests first. Others, under the suitability standard, operate under a lesser standard of offering products deemed suitable for their client's particular situation. Unfortunately for the consumer, it can be difficult to determine which standard an advisor may be operating under at any particular time.

A little history: The process of regulating the financial industry began with the collapse of 1929, when Congress passed the Securities and Exchange Act of 1934. This act ultimately led to the creation of the SEC to regulate broker-dealers.

This was followed by the Investment Advisers Act of 1940, which sought to regulate investment registration, disclosure and to prevent fraud. This law marked the first mention of a fiduciary duty to clients, but it did not specify what constituted that duty. Instead, the concept of a fiduciary duty has been developed through case law. Over time, the best-interest fiduciary standard became associated with advisors, while the suitability standard applied more to brokers, but this line has become blurred, making it difficult for consumers to know or understand the differences between the two.

With the passage of the Dodd-Frank Act, the job of implementing a fiduciary duty on the entire industry, including brokers, was punted by Congress to the SEC. Unfortunately, over the last 6 years, the SEC, has failed to act. So the DOL stepped in, and finally a fiduciary standard has been enacted. Meanwhile, the DOL rule has increased the pressure on the SEC to implement a uniform fiduciary standard on all investment accounts, not just retirement accounts.

What happened during the process? Democrats, for the most part, have lined up behind this rule, while Republicans have fought it every step of the way. Democrats want investors to have non-conflicted advice; Republicans argue that it will price low and mid-income savers out of the advice market. It should be noted that this ruling is expected to cost the brokerage industry \$17 billion

annually. With an understanding that the rule could potentially be bogged down with years of litigation, compromises were made to the original version of the rule. Some critics fear these concessions amount to a watering down that renders the rule ineffective.

These are the changes that were made to satisfy opponents of the rule:

- * Wall street brokerage firms will continue to be able to sell proprietary products, as long as they are disclosed
- * High-fee investments, such as variable and fixed indexed annuities and private REITS, will still be allowed to be sold in these accounts, as long as the fees are disclosed
- * Disclosure documents were “streamlined”, requiring fewer disclosures, and allows some fees to be disclosed with a general calculation, rather than the actual fee
- * The deadline for implementation of the rule was extended
- * The rule originally banned commission products or revenue sharing in these accounts. A best interest contract exception (BICE) was added, which allows these practices as long as advisors sign an agreement with their clients to act in their best interest and earn “reasonable” compensation

In spite of all these concessions, the House of Representatives voted immediately to kill the rule under the Congressional Review Act. Every Republican House member voted for this; every Democrat voted against. It is currently in the senate. If this were to pass, President Obama will veto it, and Congress does not have the votes to override his veto.

What is likely to happen now? The final rule does not go into effect until April 2017. The final version of the rule is 1028 pages long, and the industry is reviewing it to determine the ultimate impact. It is expected that lawsuits will be filed, and members of Congress will use every means available to try to stop it. In the end, this is a beneficial direction for the consumer, so beware of messages that state the opposite!

KMS, my broker-dealer, has been ahead of the curve and very proactive in these areas, and implemented documents long ago to clearly disclose to clients fees being paid. If you have any questions about your fees, please feel free to contact me.

Member, First Affirmative Financial Network. KMS Financial Services, Inc., is a Seattle-based broker-dealer and investment advisory firm serving clients through a network of more than 300 investment professionals nationwide. KMS is an independently operated, wholly owned subsidiary of Ladenburg Thalmann Financial Services Inc., a member of the New York Stock Exchange since 1879. Member FINRA and SIPC.

©2016 Hathaway Financial Services | 399 E. 10th, #111 | Eugene, OR | 97401 | 541.345.4400
www.hathawayfinancialservices.com

[Web Version](#)

[Forward](#)

[Unsubscribe](#)

Powered by [Mad Mimi®](#)
A GoDaddy® company