



Investment advisers ready for change

A new Department of Labor fiduciary rule will put clients first

By James McCarthy

Maine banks, wealth management firms and other financial advisors who work with retirement plans or provide retirement planning advice are gearing up to meet a new fiduciary rule from the Department of Labor that's scheduled to be gradually phased in beginning next April.

The intent of the law is to update regulations that haven't kept pace with dramatic changes in how people prepare for retirement, most notably the huge shift from employer-sponsored pensions that were more common 40 years ago, to defined contribution plans such as Individual Retirement Accounts and 401(k)

plans in which employees are responsible, typically with the help of a financial adviser, for selecting the types of investments receiving regular allocations under the retirement plan.

As such, says Christopher Pinkham, CEO of the Maine Bankers Association, the banking industry embraces the DOL's

fiduciary rule, especially since modifications were made to address the banking industry's initial concerns about its scope and potentially negative impacts related to bank CDs being used as an IRA investment.

"The bulk of this rule addresses 'transparency,'" says Pinkham, noting that the banking industry supports the rule's overarching goal of offering greater protection to consumers' investment accounts.

Pinkham says all of Maine's 31 retail banks "provide some type of retirement service," with roughly half offering significant trust and wealth management services that already are based on the fiduciary standard of being ethically bound to act in their clients' best interest and which involve fee-for-service charges, instead of commissions that can create at least the appearance of a conflict of interest.

In simple terms, the 1,023-page law expands the "investment advice fiduciary" definition under the Employee Retirement Income Security Act of 1974 so that it now includes financial advisers who work on a commission basis. The new rule doesn't eliminate commissions, but will require advisers who are paid that way to have clients sign a "best interest contract exemption,"

stipulating that the adviser will act in the client's best interest and only charge "reasonable" compensation. It also requires greater disclosure about fees and conflicts of interest.

Pinkham says Maine's banks were relieved when the DOL determined that bank CDs were exempt from the new rule's requirements, due to the fact that the CDs were available at the same returns and rates to non-IRA customers as well. The big focus now, he says, is making sure they meet the rule's initial phase-in requirements that take effect on April 10, 2017.

"It's a more than 1,000-page law," he says. "The challenge for any bank's compliance staff is figuring out what piece of that law applies to them."

Embracing the rule

"What we see as a huge benefit is the transparency," says Brian Bernatchez, a certified financial planner who is the founder, president registered principal of Golden Pond Wealth Management in Waterville. "We're embracing it as a firm. We embrace it as an opportunity."

Bernatchez says approximately two-thirds of the company's clients are retirees and those soon to be retired while the rest are nonprofits

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and business owners. The company's clients fall into four general categories: retired educators from Colby, Bates, Bowdoin and the University of Maine; mid- and upper-level management from large manufacturing companies who may have been forced into early retirement; small business owners; and people who still are working.

Bernatchez says his team provides comprehensive financial planning services, through LPL Financial to investment management clients who desire a financial plan as well as to clients for whom it does not provide investment management services. The firm typically requires a minimum account of at least \$250,000.

It's also affiliated with LPL Financial, the largest independent broker dealer in the nation for 11 consecutive years (Financial Planning Magazine June 1996-2016) that invests and manages more than \$126 billion annually. Bernatchez says LPL also embraces the new rule.

"I think we're seeing the slow death of commissions in our business," he says, noting that the smaller independent investment brokers and advisers who've been operating under a less stringent standard that only requires that their investment advice be "suitable" are the segment most likely to be challenged by the new fiduciary rule.

Fee-based accounts, for example, don't work as well for customers whose accounts have low balance (such as younger working adults just starting their retirement program). Smaller broker-dealers also might lack the personnel to keep track of compliance issues, or find the compliance costs too prohibitive, which might well encourage some of them to fold or pursue mergers with larger companies.

Bernatchez says that to the extent that the DOL fiduciary rule encourages greater disclosure by financial providers and greater understanding by consumers, it should lead to a stronger investment adviser industry and greater confidence by its customers that their retirement assets will be there when they need them.

But will President Trump scrap the DOL fiduciary rule?

There's been lots of speculation since the Nov. 8 election that President-elect Donald Trump would scrap the Department of Labor's new fiduciary rule for investment advisers before it takes effect next April, but political realities suggest it's not going to be a slam-dunk decision for him to do so.

Just two days after the election, a story in Forbes magazine reported that the Competitive Enterprise Institute and the Financial Services Institute were among the groups urging Trump and the Republican Congress to support their efforts to kill the fiduciary rule initiated by President Obama. "We stand ready to work with [the Trump administration] in ensuring Main Street Americans have access to objective and affordable financial advice as they save for a dignified retirement, pay for their children's education and help care for aging parents," said Dale Brown, president and CEO of the Financial Services Institute, which was among the trade associations filing a lawsuit against the fiduciary rule in June.

But a story that same day in MarketWatch carried the headline "President Trump likely won't mess with the fiduciary rule."

MarketWatch's quick analysis? The fiduciary rule is low on Trump's to-do list.

"This rule is becoming effective within 80 days of when Trump becomes president," Marcia Wagner, a lawyer with the Wagner Law Group, told MarketWatch. "I would find it really hard to believe that he's going to spend any of his capital on the conflict-of-interest rule in his first 100 days."

Louis Harvey, president and founder of financial services market research firm Dalbar, agreed, telling MarketWatch, "By the time Trump is done with Obamacare, the wall, Supreme Court nominees, trade deals and tax reform, the fiduciary rule will have been in place for years."

A Nov. 14 story in Wall Street Journal details efforts by House Republicans to unravel Obama's rule before its implementation in April, but also points out that scrapping the rule risks alienating Trump's Main Street supporters.

Trump hasn't publicly spoken about the rule, WSJ reported. ■

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