



DOL Fiduciary Regulations For IRAs In Limbo. Sad!

If there was ever an industry that cried out for more regulation rather than less, it's the investment advice industry. But, a new administration that never met a regulation it liked, and whose world view considers them all equally evil set out to deregulate the universe.

So, after years of false starts and delays, the Department of Labor regulation to apply fiduciary standards to IRAs has been put on another hold for 60 days. The regs which should have taken effect April 10 are delayed while the administration determines whether the regulation "may adversely affect the ability of Americans to gain access to retirement information and financial advice."

Ever since the Employee Retirement Income Security Act (ERISA) of 1974, almost all qualified retirement plans have been held to very high fiduciary standards of prudence and loyalty. In short, all decisions surrounding investments for qualified plans must be made in the exclusive best interest of the plan participants. Either the plan sponsor accepts fiduciary status or delegates that responsibility to a fiduciary, normally an SEC Registered Investment Advisor.

Glaringly, IRA's and were not considered qualified plans and not included under ERISA. In the real world that meant that a terminating or retiring employee's account could leave an environment where all decisions we based on her exclusive best interest into the wild west of Wall Street's much lower suitability standard.

To understand suitability standards if a recommendation is good enough so that it doesn't gag the average maggot, it's suitable. The basis for a recommendation does not have to be disclosed, conflicts of interest are not defined, costs may be obscured, and suitable often equates to the highest profit product for the salesman or his broker dealer. There is no requirement that the recommendations are the very best solution for the client. So, it's no surprise to see many IRAs loaded up with annuities, variable annuities, index linked annuities, index linked CDs, or high cost proprietary mutual funds.

An IRA rollover from a qualified plan is often the biggest single financial transaction of an investor's life. The funds leave a reasonably regulated environment designed to protect the participant into a parallel universe designed to enhance the interests of salesmen and their broker dealers. And it's no secret that suitability standards leave plenty of room for investor abuse. The impact on individual's retirement security can be devastating.

After decades of inaction by either Congress or the SEC to extend investor protection to IRAs the DOL proposed regulations designed to enhance protection of IRAs through a somewhat weakened set of fiduciary standards.

The DOL regulations were a big step forward for investor protection. If anything, they didn't go far enough to establish true fiduciary standards. I refer to them as Fiduciary Lite. In particular, the so called BICE exemptions (Best Interest Contract Exemptions) significantly weaken the regulations.



Cries of anguish were heard the length and breadth of Wall Street where the very concept that American investors should aspire to low cost, conflict free, prudent advice is heresy. Of course, they would like to continue to gouge retirees' investment accounts without additional pesky oversight or regulations.

Predictably opposition was marshalled around issues of consumer choice and perceived shortage of advice to retail clients. However, it's highly unlikely that investors consciously choose conflicted advice. And there is certainly no lack of alternative economical, conflict free channels for even the smallest transactions. For instance, Vanguard, Schwab, TD Ameritrade, and Fidelity along with many others offer both advice and low cost index funds or ETFs for implementation.

Retirees and participants changing jobs should not be subjected to the tender mercies of Wall Street's relentless sales machines. The DOL Regulations should be implemented without delay and strengthened.

In the meantime, investors faced with a pension rollover and/or IRA investment decision should insure that any advice comes from an advisor that will certify in writing that he/she accepts fiduciary status and responsibility for recommendations.