NAR Issue Summary
Commercial / Department of Labor Fiduciary Rule

NAR Committee:

Commercial Federal Policy Committee

What is the fundamental issue?

The Department of Labor (DOL)*Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice* went into effect in part on June 9, 2017, and the second part will go into effect on January 1, 2018. The rule, known as the DOL Fiduciary Rule, expands the field of professionals held to a fiduciary standard in the context of offering investment advice.

I am a real estate professional. What does this mean for my business?

Unless your business deals with retirement funds or you are also a Certified Financial Planner (CFP) or other financial services professional, this rule will have limited impact on your business.

NAR Policy:

NAR does not have a policy statement at this time.

Opposition Arguments:

Consumer rights groups such as AARP support this rule and think it will increase transparency in the retirement industry, improve service to investors, and eliminate hidden fees. The Obama Administration framed the rule as a major success for the average investor (memo). One reason is because advisors must now spell out more clearly to investors why certain recommendations are being made, and disclose any commission or special bonus involved in the transaction. Other supporters point out that this rule could minimize or eliminate the commission-based pay structure for advisors.

Small business groups such as the US Chamber of Commerce, and financial services industry groups such as Securities Industry and Financial Markets Association (SIFMA), have decried the rule as regulatory overreach that will be disruptive to the financial services industry and consumers.

Financial services professionals in good standing are already in compliance with many of the standards set out in the rule, so opponents argue this rule adds a redundant layer of cost and compliance.

One of the main concerns of these groups is that the enhanced standards and regulatory compliance involved with increase the cost of financial advice, and will limit access to financial advice. Financial professionals may not want to work with these types accounts given the increased regulation of the advisor's relationship with the account. Since the main type of account impacted by this rule is employer-sponsored retirement plans, opponents of the rule fear that these costs will give retirement savers an additional barrier to saving and investing.

The complexity of the rule has also raised the concerns of opponents. Uneven application of the new standard could result in inconsistent service to investors. Geographic areas with fewer financial professionals could be greatly impacted by an unavailability of professionals working with these accounts.

Legislative/Regulatory Status/Outlook

Previously, only registered investment advisers were held to this standard. Others, such as investment brokers and other advisors, had only to meet a 'suitability' standard. The rule requires financial professionals who provide advice and receive compensation to act in the "best interests" of their clients when investing their IRA and 401(k) funds. The "best interest" standard creates a fiduciary duty for these professionals. Now, anyone offering retirement investment advice for compensation must meet the fiduciary standard. The application of this standard creates a professional and ethical standard for advisors.

The rule has two main goals:

1. To ensure financial professionals put clients' interests first when advising on retirement accounts; and
2. To provide transparency about the cost of investment advice and the costs of products that an investment advisor recommends.

While the rule was proposed initially in 2010, it was retracted by the DOL for further economic study and re-proposed in 2015. The rule was finalized in 2016. The original effective date was April 10, 2017, but an extension pushed the date back to June 9, 2017, when the rule went into effect in sections.

Secretary of Labor Alex Acosta has hosted an industry stakeholder meeting for those impacted by the rule. Secretary Acosta has also asked the Office of Management and Budget (OMB) for a formal review of the rule. In July 2017, the Department of Labor put out a request for information on the rule.

Current Legislation/Regulation (bill number or regulation)

Department of Labor, Employee Benefits Security Administration; Definition of the

Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice. (81 Fed. Reg. 20946)

Affordable Retirement Advice for Savers Act– Introduced in the House, June 7, 2017

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