

DOL Fiduciary Rule Puts American Investors First

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American workers and families should cautiously applaud U.S. Department of Labor Secretary Alexander Acosta's decision to allow partial implementation of the fiduciary rule to proceed on June 9. Indeed, he recognizes the need to protect retirement investors, but the reality is that investors will still need to fight to keep this protection, now and in the future, from predatory marketing practices.

For years, independent marketing organizations (IMOs) and the insurance companies that back them systematically have misled investors by preying on their fears and forcing high-fee, complex proprietary fixed indexed annuities (FIAs) on them — whether or not the product was right for the investor in the first place. The designers of complex proprietary FIAs lure insurance agents with potentially high commissions and year-end bonuses. They also incentivize IMOs marketing these complex proprietary FIAs with protected margins of commission and limited distribution models that ultimately hurt investors due to the deceptive marketing nature of these complex FIAs.



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While finding no principled legal basis for further delay, the Labor Department's review of the fiduciary rule and exemptions is ongoing. The agency must continue to resist the well-orchestrated campaign that the complex proprietary FIA industry has waged to unravel regulations that would provide greater protection for American investors. Evisceration or a complete dismissal of the fiduciary rule, which would govern the sale of unregulated complex propriety FIAs like the sale of regulated variable annuities whose characteristics they mimic, remains a threat and would be a travesty for all investors, especially senior citizens and those who are less sophisticated.

There is a fundamental issue at stake: investors must be able to understand the nature of their investment and feel certain they received advice that was in their best interest based on their unique circumstances, not to mention free of any conflict of interest. The FIA industry and its trade groups are expected to continue fighting the Labor Department's fiduciary rule, which mandates that agents who sell complex propriety FIAs act in their client's best interest when providing investment advice. The industry and its trade groups, no doubt, will attempt to overturn the rule through a series of lawsuits coupled with an aggressive public relations and lobbying campaign.

Taking partial effect on June 9, the rule requires that all financial professionals, including brokers and insurance agents who work with retirement plans or provide retirement planning advice, act as fiduciaries — meaning the law will bind them to act in the best interests of their clients and to put their

clients' interests above their own. Most people consider this common sense — an investment professional should act in the best interests of their clients and put their clients' interests above their own.

This simple, basic and straight-forward principle is important. Investors must be protected and need the protection that the rule affords.

There is no more basic premise than a financial professional acting in the best interests of his or her client. In fact, one should wonder why any organization would challenge a concept of acting in a client's best interest. It is curious why the FIA industry and its trade groups favor voiding the fiduciary rule; the most widely accepted explanation is profit and greed. This is more than disappointing; it is alarming. We have heard a great deal about "draining the swamp" and protecting the American public from corporate greed. Those who are screaming the loudest to "drain the swamp" — middle-class Americans who have lost jobs or are retired with limited savings — are the most likely to be hurt without the fiduciary rule to protect them.

Insurance agents offer FIAs to consumers as an alternative to investing directly in the stock market and, often, many agents coax seniors and retirees to sell their IRAs, securities and other investments to purchase complex proprietary FIAs, transforming themselves into the role of investment advisors. Investment advisors must be registered either with a state or the U.S. Securities and Exchange Commission. Yet, curiously, insurance agents displaying all the characteristics of investment advisors are not required to be registered or warn their clients about products that may not make sense for them.

Then, there is the conflict of interest issue — agents recommend a complex proprietary FIA product simply because of their own opportunity to receive potentially high commissions and bonuses. This stark reality is highlighted in a United States Senator's report, "Villas, Castles, and Vacations: Americans' New Protections from Financial Adviser Kickbacks, High Fees, & Commissions are at Risk," that calls out the industry and its deceptive tactics. The report discusses the kickbacks received by annuities sales agents: "annuity providers were offering sales agents a vast range of perks — from cruises to lavish international travel to iPads, to diamond-encrusted 'NFL Super Bowl Style' rings ... to entice the sales of their products — regardless of whether they were the best investment for retirees."

What that means to the average investor is the insurance agent who is not registered to give investment advice receives lavish kickbacks for selling to unsophisticated investors complex proprietary FIAs that they don't understand.

Why would an insurance agent support the fiduciary rule? What incentive does an insurance agent have to advocate for the fiduciary rule? Luckily, some do care about their clients' best interests as well as the integrity of the industry. Many work with financial institutions that offer high-quality FIAs that have guaranteed riders and provide peace of mind and safety that investors deserve. Such instruments, like the fiduciary rule itself, are in the best interest of retirees and consistent with a fiduciary obligation to investors, which honorable insurance agents are prepared to and do embrace.

Congress and the administration have the power to put American investors first by fully implementing the fiduciary rule on Jan. 1, 2018, and requiring individuals who provide retirement investment advice to act in the best interest of their clients. In 2010, both Congress and the prior administration protected patients by passing the Physician Payment Sunshine Act to increase transparency and bring to light conflicts of interest and end pharmaceutical manufacturers' wining and dining of doctors to influence their decision-making. It's time Congress and the current administration, as well as the SEC, as Acosta

invited, give the same consideration and protection to American investors by standing behind the fiduciary rule.

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