How Retirement Plan Advisors Can Benefit From Any New DOL Fiduciary Rule

By Ary Rosenbaum, Esq.

One of my favorite companies is Netflix. The first time I came into contact with them, it was through an offer that was in the box of the first DVD player I bought in 2000. Instead of rentals through Blockbuster or Hollywood Video, I used them. They eventually helped put Blockbuster and Hollywood Video out of business. Sensing that digital formats and the potential of web streaming video was the future, Netflix took the huge expense of adding a streaming service because they didn't want to be the next Blockbuster Video where renting DVDs by mail was going to be obsolete. They even sunk $100 million into producing House of Cards and more money into Arrested Development and Orange is the New Black and people thought they were crazy. What Netflix proves is that change can be a good thing as long as your embrace change. If you don't change with the times, times will change you.

NETFLIX
way
DVD VIDEO
©2006 All Rights Reserved

The Department of Labor's (DOL) proposed fiduciary rule has been the talk of the retirement plan industry of late and for good reason, it's been in the work for several years. It's the DOL's second crack at it and they have been persistent in trying to avoid the withdrawal of their proposed change a few years back, When it comes to progress and government regulation, these changes do take time and history has shown that the proposed rule will likely be changed over time through revisions and compromise. However, that doesn't mean that as a retirement plan advisor you should be waiting for the DOL. You should be prepared for change whether you are a registered investment advisor (RIA) or broker. This article will give you some strategies on how to cope with any rule change and how to let this rule change positively affect you.

It's inevitable

While Congress fueled by Wall Street contributions will try to kill any change to the fiduciary rule to cover brokers, I believe that the DOL will eventually get some form of the rule changed. The DOL has spent too much capital over the past 6 years to overhaul the retirement plan industry and the sun will set on the Obama administration and much of the DOL leadership in less than 2 years. A DOL official like Phyllis Borzi has put too much time into the fiduciary rule without seeing some change. Eventually, there will be some new fiduciary rule, likely watered down from its original proposal. There will be some applicability of the fiduciary rule to brokers, but there will likely still be a higher standard of care for RIAs.

How can RIAs take advantage of the rule change?

Even in its proposal, the Fiduciary Rule would still have a higher standard for RIAs because that is part of who they are. Much of my business is working with RIAs in compliance and contract drafting issues, so I understand and admire their work. The problem with the RIA model has always been about marketing. RIAs have had a hard time in explaining to a plan sponsor why they have a higher duty of care than brokers and what that actually means. They also have a tough time in explaining what having a retirement plan advisor that also serves as a co-fiduciary means. So the RIAs need to better market their practice and delineate the difference between them and brokers right now and after any rule change is put into place. The same level fee and the higher duty of care is a competitive advantage and that message needs to connect to plan sponsors.

Another way to take advantage of any rule change is to keep an eye on what brokers will be doing. While placing brokers under a fiduciary rule will not likely affect a large brokerage house, it will have an impact on the smaller houses that may not want to face the cost or burden of being fiduciaries for retirement plans and individual retirement accounts (IRAs). For the small brokers that don't want to be fiduciaries, it may make sense to partner up with them with the RIA being the fiduciary and paying the broker to handle non-fiduciary services such as plan enrollment or plan provider selections. It's a win-win for the RIA and the small time brokerage house. A few years back, I had already started drafting agreements for ERISA §3(38) advisors who partnered up with small brokerage houses in offering their services to the broker's clients. It's easier to partner up with brokers than it is to compete, at least that's what I think. An RIA who is already thinking about partnering up with brokers is already ahead of the game.

How can Brokers take advantage of the rule change?

For the larger brokerage houses, they will need to formulate a structure that will allow them to remain in the retirement plan space with limited exposure of being a fiduciary. That would most likely be to do what they have already been doing, designating some advisors with retirement plan exposure to also serve in a fiduciary capacity. So these big time advisors will continue to do what they have been doing already while requiring the smaller brokers in the office to team up with the larger brokers. It won't be fun for the smaller brokers in the office that had the client, but it's better than losing the client completely.

For the smaller brokerage houses, they may shy away from have anything to do with that f word, fiduciary. So their solution for a rule change might be about teaming up with an RIA firm where the RIA can serve as the fiduciary while the small time brokerage houses receives remuneration for non-fiduciary services. As discussed before, this is something I've seen in the industry and documents I've drafted solely for that purpose.

Whether the brokerage house is large of small, I think it wouldn't be smart to exit the retirement plan space all together. Handling retirement plans and IRAs are an ancillary business because it may also develop into more lucrative privately managed accounts. Working on a retirement plan may lead to business in managing money for the owners/highly compensated employees that tends to be more lucrative in terms of compensation. In addition, retirement plan sponsors are great referral sources for other retirement plan sponsors. Retirement plans and IRAs are opportunities and it would be unwise for any brokerage house to turn down such an opportunity.

Take that opportunity

Regardless of status as a retirement plan advisor, any expanded fiduciary rule will be an opportunity for the advisor ready for this change because change in the retirement plan industry always equals opportunity for the bold. Being proactive about change will bring more success than just trembling at the thought that the industry will change because that causes business paralysis. We saw how fee disclosure regulations change the business; the plan providers that could acclimate to this change did better than those that couldn't find a way to grasp it. Either you change with the times or the times will change you.

THE
ROSENBAUM
LAW FIRM P.C.

Copyright, 2015. The Rosenbaum Law Firm P.C.
All rights reserved.

Attorney Advertising. Prior results do not guarantee similar outcome.

**The Rosenbaum Law Firm P.C.
734 Franklin Avenue, Suite 302
Garden City, New York 11530
(516) 594-1557**

**http://www.therosenbaumlawfirm.com
Follow us on Twitter @rosenbaumlaw**