

Welcome to Financial Advisor IQ

- [Log In](#)
- [Register](#)
- [About](#)
- [Contact](#)
- Follow



[Our Sister Sites](#) ▼

**FINANCIAL
ADVISOR** 

A Financial Times Service

[Home](#)

[FA-IQ Education](#)

[ThinkTank](#)

[Community](#)

[Sponsored Webcasts](#)

[Rankings](#)

[Opinion](#)

[Videos](#)

[Polls](#)

[YourQ&A](#)

[Topics](#)

[The Client](#)

[Finding and winning new clients](#)

[Client retention](#)

[ERISA plans/institutional management](#)

[Behavioral finance](#)

[Family wealth/family office](#)

[Special services](#)

[The Assets](#)

[Portfolio management](#)

[Insurance planning](#)

[Estate planning](#)

[Tax planning](#)

[Retirement planning](#)

[Investment strategies](#)

[The Practice](#)

[Technology](#)

[Fees and compensation](#)

[Staffing and recruiting](#)

[Regulatory/legal issues](#)

[Succession planning](#)

[Marketing](#)

[Job Blast](#)

Keyword Search



DOL Fiduciary Rule Comments Unearth Deep Unease

By [Murray Coleman](#) August 7, 2017

Heading into the final day to comment on the **Department of Labor**'s efforts to enforce its new fiduciary rule on retirement planning, more than 400 letters from a range of [different industry players](#) are flowing into the regulator's coffers.

But a few common themes are already becoming apparent, say legal experts and wealth management analysts surveyed by FA-IQ. These include concern about a process some see as prohibitively expensive and too complicated to implement right away.

Besides such operational concerns, several major broker-dealers are urging DOL regulators and **SEC** officials to work together.

"A lot of firms are saying that the SEC is the regulatory body impacting the broadest cross-section of the industry, so they're arguing that the DOL should coordinate any implementation changes with the SEC," says **Christopher Barnes**, a financial services analyst at **Cogent** in Cambridge, Mass.

Some big banks are pointing out that as many as 19 different regulatory bodies now oversee their operations, he notes. "A crosscurrent of dissent is whether the DOL should even be involved in this issue," Barnes says.

A case in point is a letter by **Dennis Glass**, chief executive at **Lincoln National Corp.** He calls for the DOL to "work with other financial services industry regulators" – including the SEC, **Finra** and state authorities – "to create a harmonized standard of care" and "uniform" enforcement policies.

While a call to delay full implementation of the DOL rule's early 2018 deadline is a common refrain, no consensus seems to be forming around the exact timing. Some firms are voicing support for a six-month delay while others would like to see a year's delay.

Several commentators are even seeking a delay tied to when the DOL actually comes to a final decision, which some letter writers complain still remains unclear. Along those lines, analyst Barnes notes the DOL's initial commentary period's Monday deadline seems to be "accelerated" from more typical governmental timeframes.

"It's probably no coincidence that even though they've set a deadline," he says, "the DOL is also leaving some wiggle room to accept comments for a little longer."

Indeed, the DOL has [posted an update](#) on its site addressing such requests. In part it says: "The Department continues to encourage interested parties to submit comments as soon as reasonably possible but appreciates that a longer period may allow some commenters to provide additional information."



(Getty)

Contrary to an earlier commentary period, this new round asks a series of more than a dozen [different questions](#) ranging from whether the rule is going to harm or help investors to how the best interest contract exemption might impact advisors.

The BICE provision seeks to open avenues for brokers to earn commissions when working with retirement accounts by disclosing in writing to clients the implications of what's being proposed.

“This new period for comments is probably going to prove to be more indicative of the changes to take place in the BICE and other parts of the rule – the questions being asked now are fairly specific,” says **Bonnie Treichel**, chief compliance officer for independent RIA **Multnomah Group** in Portland, Ore.

The attorney for the independent RIA, which manages about \$16 billion, adds that the Trump administration now has its pick to head the DOL, **Andrew Acosta**, in place. “That should also help to make this comments period more substantive than past rounds,” Treichel says.

The looming Monday deadline comes after the department asked this spring for comments about pushing back the start of implementation from April. Then on July 6 – less than a month after partial implementation began – the Federal Register published another request asking whether the rule should be delayed even longer and whether bigger changes need to be considered.

Since then, a [public comment letter](#) from SEC commissioner **Michael Piowar** has raised some eyebrows. While emphasizing that such comments represent his personal views, he asserts that the DOL's fiduciary reg is “dismissive of the efficacy of conflict of interest disclosure” by running “counter to decades of commission experience.”

Piowar also warns that the rule “fails sufficiently to distinguish ‘selling’ activities from ‘advice’ activities.” That, in turn, represents an “undermining [of] the commission’s longstanding approach to regulation of broker-dealers and investment advisers.”

Piowar adds in his letter that he's worried “the effects of the fiduciary rule will extend beyond retirement accounts and will be disruptive of the broker-client relationship in general.”

Any apparent jockeying for position on fiduciary standards between regulators also seems to be sparking an outpouring of comments about the costs of full implementation, observes **Marcia Wagner**, an estate planning and Erisa attorney in Boston.

“One of the areas of concerns clearly being expressed in the letters we’ve seen up to this point relates to higher litigation costs,” she says. “Major industry players are worried that the [BICE] exemption might open a Pandora’s box for more class action lawsuits.”

The biggest push to keep the DOL rule “as is” appears to come from consumer advocacy groups and big unions, notes Cogent’s Barnes. At the same time, he points out several advisors running independent RIAs are also voicing strong anti-BICE sentiment.

“I was a strong supporter in the early going – I’ve been acting as a fiduciary for my entire career,” says **Gary Duell**, an indie advisor in Happy Valley, Ore.

But he's changed his mind and now leans towards reshaping how the rule's implemented. This prompted Duell, who works on retainer, to write to the DOL last month arguing to “scrap the whole DOL botched regulatory attempt.”

Now, he finds himself “neutral” on the whole topic. “On the one hand, it’s hard to argue that protecting consumers is a bad idea,” Duell says. “But I don’t think enforcing fiduciary standards through greater use of trial lawyers will accomplish a whole lot.”

Today he’s taking a more “wait and see” attitude. “I’m still expecting implementation of the rule at some point,” Duell says. “So I’m not spending much time worrying about it anymore – to me, this train has already left the station.”

August 7, 2017

[Select Issue By Date](#) [← Previous Issue](#)

DOL Fiduciary Rule Comments Unearth Deep Unease

[Morgan Stanley Is Pitching Big Data Against Robos](#)

[Here’s Why Broker Consolidation Could Last Decades](#)

[FAs Have More Potential Clients Than Ever Before](#)

[The Old Models Aren’t Working So Well for Retirees](#)

ThinkTank: Latest Published Content

• [US Asset and Wealth Management Deals Insights Q2 2017](#)

PwC

• [Second-half market outlook: Seeing global markets in 3D](#)

Invesco Ltd.

• [The Pursuit of Average: The Cost of Passive Investing](#)

Guinness Atkinson Asset Management

[Print This Issue](#)

Most Popular

Last 5 Issues

- [Read](#)
- [Emailed](#)
- [Saved](#)
- [Commented](#)

1 [\\$3.5B Wirehouse Team Jumps After Losing \\$2B in Assets](#)

2 [DOL Fiduciary Rule Comments Unearth Deep Unease](#)

3 [RIAs Warned of New Form ADV Requirements](#)

4 [Wells Fargo Faces Multiple Whistleblower Complaints](#)

5 [Recruiting in Broker-Dealer Space Heats Up](#)

An Information Service of [Money-Media](#), a Financial Times Company

[Copyright](#) • [Terms & Conditions](#) • [ThinkTank Terms & Conditions](#) • [Privacy Policy](#) • [Cookie Policy](#) • [FAQ](#) • [About Us](#) • [Reprints](#) • [Advertising](#)

Follow    