Trump admin signals intent to nix key fiduciary rule provision

By Andrew Welsch
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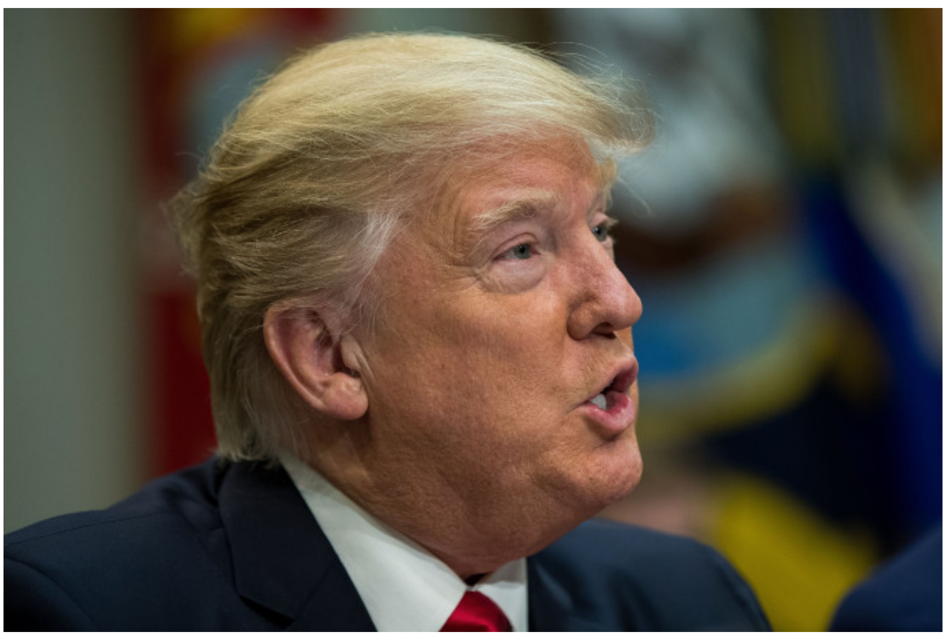
More in Fiduciary Rule,Regulatory relief,Fiduciary standard,Practice management,Law and regulation,Alexander Acosta,Elliot Weissbluth,DoL,DoJ

The Trump administration further indicated that a key enforcement provision of the Department of Labor's fiduciary rule will be nixed, providing a boost to the opponents of the regulation.

The new development stems from a letter filed by the Department of Justice an ongoing case between the Labor Department and Thrivent Financial for Lutherans, which is asking a federal judge to nullify provisions in the rule that permit clients to pursue class action lawsuits.



President Trump has called for a review of a wide array of financial regulations, including the Department of Labor's fiduciary rule. (Bloomberg News)

The Justice Department, which is defending the government in the case, filed a letter to Judge Richard Nelson that "a stay of the litigation is the most efficient way to address this claim regarding a provision that is not currently applicable to plaintiff and which will likely be mooted in the near future."

Secretary of Labor Alexander Acosta allowed the first stage of the rule's implementation to go into effect in June, but is also pursuing a review of the regulation that President Trump ordered in February.

The move builds on earlier developments; in a separate case the Trump administration dropped hints that it would be amending the fiduciary rule to remove the class action provision.

"The writing was on the wall as early as July. Now we're just watching the process play out," says Micah Hauptman, financial services counsel at the Consumer Federation of America.

Wall Street trade groups and wealth management firms have been railing against the class action provision, saying it will open up the floodgates to costly new litigation.

QUICK TO DEFEND

Supporters of the fiduciary rule, however, were quick to defend the provision as a key enforcement mechanism.

"Class-action provision is 'most-reviled portion' of DOL #fiduciaryrule because it's the only aspect with any teeth," HighTower Advisors CEO Elliot Weissbluth tweeted Friday. The chief executive has been an outspoken proponent of a fiduciary standard.

The provision was critical because it allows investors to band together where there has been systematic misconduct, according to Hauptman.

"That's particularly the case for smaller claims," he says. "If an investor is wronged by a couple hundred bucks, then they might not go to arbitration because it's not worth it to them. If a firm unjustly decides to extract a couple hundred extra dollars from their customers, which could add up to millions of dollars, then we need a tool to make sure that doesn't happen. We need a tool to hold them accountable."

Thrivent filed its lawsuit in September 2016, arguing that the class action provision disrupts the unique relationship Thrivent has with its members. The firm is membership-owned and operates as a fraternal benefit society, which it claimed in court documents makes it significantly different from other mainstream commercial companies.

"Given the unique relationship between Thrivent and its members, Thrivent has long chosen to resolve the rare disputes that arise with its members in a way that preserves and strengthens its member relations," the firm's complaint said.

The Labor Department, meanwhile, is seeking another delay in the second phase of implementation of the fiduciary rule, pushing the deadline back to 2018 from January 1, 2017.

Andrew Welsch

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Posted By **dee@medallionplanning.com**
Friday, August 25 2017 at 4:06 PM

Thrivent makes a good point. How do you sue a fraternal organization you belong to? Since the cost of defense is born by the other members, isn't that taking from many to enrich a few? Wouldn't it be improper to enrich a law firm in excess of what the harmed members receive? Just another example of people who want to regulate without understanding the complexities of the field they want to regulate.

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Hurricane Harvey: Helping clients after the clouds clear

By **Chelsea Emery**
Published **August 27 2017, 11:12pm EDT**

More in **Practice management,Crisis management,Disaster planning,Client communications,Client strategies,RIAs**

Portions of this article were first published in 2016 in "Hurricane Matthew: Helping clients before — and after." It has been updated throughout.

As Hurricane Harvey bore down on the Texas coastline last week, adviser Liz Miller and her colleagues at Summit Place Financial Advisors in Summit, New Jersey, immediately began calling clients who might be affected.

"We reached out proactively to clients in the area checking if they had left and offering help if we could," says Miller. With continued rain and flooding expected over the next few days, she says her firm will continue to "reach out and see how we can help."

Flooding is seen after Hurricane Harvey hit Rockport, Texas.
Bloomberg News

Unfortunately, she has had to make similar calls before. Last October, she and her colleagues rushed to offer financial advice and emotional support to clients who were in the path of Hurricane Matthew which slammed the Florida coast and left more than a million people without power.

Fortunately for Miller's clients, she'd prepped them long before the hurricane.

"Over the past couple years we have encouraged every client and friend of the firm to complete a critical information organizer that we provide to record contacts and locations of important documents," she says. "We also offer to scan and post estate planning, insurance and other important documents to the secure vault on our clients' personalized firm websites."

Before other storms, Summit Financial has helped clients procure flood and earthquake insurance. They've also suggested they allocate cash to be held at a local community bank or an out-of-town bank, in case evacuation was needed.

"Money is the last thing you want to worry about when facing a potential natural disaster," she said in October.

To better help clients affected by natural disasters, here are some planners' best practices.

AFTER THE STORM

Offer financing advice: Planners can play an important role for clients picking up their lives after a natural disaster, says David Lee, Raymond James's head of practice management. "The best we can do is let them know how insurance works," Lee says. "Where cash is needed we help them [find resources] to fund repairs or even down payments."

Offer special advice on securities-based lending, Lee adds. Help clients access financing in the most cost effective ways, such as second mortgages or HELOCs. "Those are the kinds of things you can do," he says.

Reach out, show up: "We reach out any time we hear about an event or impending event that might impact clients," says Summit's Miller. "We want to share our personal and professional concern and offer any help we can."

Miller has "held hands" with clients after disasters and offered practical advice, both financial and personal. "We have come in person to help during and after a wide range of events that are both financial and emotional in nature," she says.

Digging deep: After Superstorm Sandy devastated portions of New York in 2012, Staten Island-based Allan Katz took on tasks large and small. The owner of independent agency, Comprehensive Wealth Management Group, helped one client, a home improvement contractor, get more lines of credit by researching rates and literally taking the business' financial information to the banks, bringing back paperwork for the business owner to sign. That allowed the contractor to keep running around the clock and repair more homes.

BEFORE DISASTER STRIKES

Advisors say that certain preparation can help them help their clients.

Provide a checklist: While Miller suggests clients complete an information organizer, Lee assembled a checklist that covers everything from evacuating a home, to storing financial documents, to compiling what he calls a "bugout bag."

Demonstrate special expertise: Lee's list offers information that is more financially oriented than the standard U.S. Red Cross emergency checklist. About safe deposit boxes, he writes: "The disadvantages of the safe deposit box are that it may not be immediately available if your bank location was severely damaged, there is an annual fee involved and, there is no guarantee (and no FDIC insurance) against damage to your belongings while in the box."

Chelsea Emery

Chelsea Emery is Editor-in-Chief of Financial Planning, SourceMedia's flagship brand covering wealth management.

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