



## Even Without the Law, Fiduciary Rule Awareness Remains

After [lengthy delays](#) and attempts to [kill the regulation](#), the Department of Labor's Fiduciary Rule went in to partial effect in June 2017. Now, the fifth circuit court has [struck down](#) to the rule, after concluding that the rule "overreached" and was "unreasonable." While the ruling could end the Fiduciary Rule as law, it cannot erase the awareness the DoL raised nor can it stop market forces leading the business towards a more ethical place.

### Fiduciary Rule as Law May Still Exist

Despite the ruling, attorneys note that the Department of Labor has many ways to respond. First, it could ask the Supreme Court to hear the case given that several circuit courts have reviewed the rule and come to different conclusions. Second, it could simply ask the fifth circuit court to reconsider its decision, in which all the judges would review the rule again. In each of the scenarios, the DoL could request a stay of the latest ruling. Lastly, the DoL could let the decision stand and start over on a new rule that addresses concerns the court had.

The Department of Labor is not the only group looking to implement a fiduciary rule for financial advice either. The SEC is [currently writing](#) its own version of the DoL's fiduciary rule. The proposed rule is expected to require brokers to provide advice that puts the clients' interests first while also requiring up front disclosures regarding fees, services, and conflicts of interest. The SEC hopes to vote to propose its rule by the end of the second quarter of 2018.

### Impacts Extend Beyond the Law

While the DoL's Fiduciary Rule as law may be on its last legs, the impact on the industry is not something that can just be wiped away. As Vanguard founder John Bogle said in a [New York Times op-ed](#), "the fiduciary rule may fade away, but the fiduciary principle is eternal. The arc of investing is long, but it bends toward fiduciary duty."

Since the original proposal, some of the largest advisor groups in the world have made changes to better serve clients. Given the recent ruling can be appealed, these changes are unlikely to be rolled back. Bank of America Merrill Lynch (BAC) [moved clients](#) from commission-based accounts to fee-based ones. Fidelity has been [aggressively pushing](#) fiduciary services for retirement plans. [BlackRock](#) (BLK) and [JPMorgan Chase](#) (JPM) have embraced technology to improve investment decision-making. Morgan Stanley has invested heavily in technology firms to improve the products and services it offers wealth-management customers.

### How the Market Can Force Adherence to Fiduciary Service

Perhaps the most important aspect of the DoL's fiduciary rule was the awareness it created. Investors now know there is a clear difference between suitability and fiduciary advice. The DoL effectively shined a light on the failings of investment advice and research and investors are better off for it. Law or not, investors can now [force the industry](#) to offer a fiduciary level of service by speaking with their wallet (or in this case, investment account).

When given a choice between firms offering advice that adheres to the suitability standard vs. the fiduciary standard, we think it's logical to assume the fiduciary standard will win out. Why would clients knowingly choose advice that may not be in their best interests. As long as investors can demand this higher level of service, we think they probably will. Accordingly, expectations for a fiduciary standard are here to stay long after the DoL law is approved or denied.

### Fiduciary Rule Provides a Better Way Forward

Investors should be able to trust that advisers aren't overcharging or giving them conflicted investment advice to generate more revenues for the firm. The principle behind the fiduciary rule, whether implemented by the DoL, the SEC, or another regulatory body, leads to higher quality investment advice. Without a fiduciary level of service, advice is likely to be:

1. **Incomplete** – doesn't take into account all information (especially from the footnotes and MD&A)
2. **Conflicted** – sell-side research is [notoriously conflicted](#)



3. **Only beneficial to the advisor** – under the suitability standard, a broker's duty is to the broker-dealer first, then the client
4. **Unnecessarily expensive to clients** – brokers have no incentive to sell lower costs products even if they're better suited for the client and/or perform better

On the other hand, with a fiduciary level of service, clients receive advice that is:

1. **Comprehensive** – considers all relevant data about the client and all publicly available data on investments
2. **Objective** – unbiased advice using unbiased research
3. **Transparent** – clients can see all aspects of the investment process, including the analysis performed and the data behind it.
4. **Relevant** – investments have a clear connection to the client's financial goals and the research behind advice has a [tangible, quantifiable connection to stock or fund performance](#).

Can anyone really argue that clients aren't better off receiving advice that meets these criteria? Certainly, most investors believe they deserve this level of care from their advisor, and many probably assume their advisors are already required to meet criteria as high as the ones above.

The SEC and DOL could begin to work together to promote a fiduciary standard of loyalty and care for advisors that meets the criteria above. By clearly defining the fiduciary relationship, regulators can reduce uncertainty, restore public trust, and alleviate court concerns.

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*Disclosure: David Trainer, Kyle Guske II, and Sam McBride receive no compensation to write about any specific stock, sector, style, or theme.*

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