



Insight

The Future of the Fiduciary Rule

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Last week, President Trump signed a Presidential memorandum instructing the Department of Labor (DOL) to delay implementing the fiduciary rule, which currently is set to go into effect on April 10, while it studies its potential effects. Recall that the fiduciary rule, a legacy regulation from the Obama administration, would hold financial advisors to a heightened legal standard of scrutiny when giving advice. In effect, it would send retirement savers into fee-based (as opposed to commission-based) accounts, and many, especially with lower account balances, [would be pushed out of an advisory service](#) completely.

As the American Action Forum (AAF) found last year implementing the fiduciary rule would cost those saving for retirement upwards of [\\$1500 in duplicative fees](#). Further, for those who are unable to roll over their 401(k)s into individual retirement accounts (IRAs), the rule would cost [\\$1,375 per account, per year](#), or a total of \$4.2 billion lost each year – and that doesn't take into account the over [\\$31.5 billion in regulatory costs and 57,000 paperwork burden hours](#). Considering this, any action by the new administration to halt the fiduciary rule or make it more workable (more on that [here](#)) should be celebrated.

But delaying the rule's implementation doesn't mean it's gone forever. Several factors come into play, and there are multiple options for dealing with the fiduciary rule. First, if DOL does in fact push back the rule's effective date as President Trump has asked, DOL will then have time to go through full notice and comment procedures to either repeal the rule entirely or reform some of its more troublesome components. At a minimum that would take 30-60 days, but could take up to several years, as we saw with [previous versions of the fiduciary rule](#).

Second, while the rule is being delayed, [one of the pending lawsuits](#) could be decided. If it goes in favor of the plaintiffs, the rule would be moot, and presumably, Trump's Department of Justice (DOJ) would not challenge the ruling. However, if the court rules in favor of DOL, the rule would still be valid, but then would be subject to whatever delay or alteration the incoming Secretary of Labor decides to implement.

Third, the rule could be dealt with legislatively. Already [Rep. Joe Wilson has introduced a bill](#) that would delay the rule. Congress could also mandate that another agency, like the Securities Exchange Commission (SEC) take the reins and undertake the cost benefit analysis and rulemaking process to issue a fiduciary standard for investment advisors. [Rep. Ann Wagner introduced a bill](#) to that effect last year which passed the house but never made it to the Senate.

All things considered, the exact future of the fiduciary rule is unclear. But it is becoming more clear that this administration is no fan of the rule as it is currently written. Most people can agree that some sort of fiduciary standard is a good idea, but it must be tailored to be workable and efficient, and it should be implemented and enforced by a more appropriate agency, like the SEC.