

AAll Survey: Readers Weigh in on Fiduciary Rule Court Decision

The 5th Circuit Court of Appeals ruled on March 15 that the Labor Department overstepped its authority by creating the “fiduciary rule,” which requires advisers and brokers to put their clients’ interests before their own when advising on retirement accounts such as 401(k) plans and individual retirement accounts.

Following the court ruling, the Labor Department announced it will no longer enforce the 2016 fiduciary rule.

So what does this mean for investors? Well, many may not realize that their financial adviser or their firm may:

1. Not always place your interests ahead of his own,
2. Have conflicts that influence the advice he gives, and
3. Collect fees on investments he selects for you that are much greater than you might expect.

Many financial advisers are not fiduciaries; they are essentially brokers who are subject to a “suitability” standard. For suitability, the U.S. Securities and Exchange Commission (SEC) says the financial adviser “must have a reasonable basis for believing that the recommendation is suitable for you.” This is a lower standard than being a fiduciary, which demands that the adviser place the client’s interests ahead of his or her own. This may not seem like much of a difference, but it can be very significant.

According to the Financial Industry Regulatory Authority (FINRA), nearly 90% of investment adviser representatives are also registered as brokers, so finding a fiduciary adviser isn’t as easy as it seems.

To help you in this search, the Labor Department offers a fact sheet called “**How to Tell Whether Your Adviser Is Working in Your Best Interest: A Fiduciary Guide for Individual Consumers.**” You can also go to the **Let’s Make a Plan website** and click on “Find a CFP Professional.” All CFP professionals (certified financial planners) are required to adhere to a fiduciary duty when providing financial planning services. **The Financial Planning Association** and **The National Association of Personal Financial Advisors** also have searchable databases for finding an adviser.

AII Weekly Survey Question

In light of these developments, last week's AII survey question asked whether our readers agreed with the 5th Circuit's ruling.

Here are the results:

Recently, a U.S. circuit court struck down the Labor Department's fiduciary ruling requiring brokers and others handling investors' retirement savings to act in clients' best interest rather than just ensuring they are offered suitable products. Do you agree with this ruling?

No : 73% - Votes: 1842



Yes : 21% - Votes: 525



Not sure : 6% - Votes: 150



In all, 2,517 readers participated in the survey.

The vast majority of AII readers—73%—disagree with the court ruling that overturned the so-called fiduciary rule.

It is a bit surprising that slightly more than one-fifth of readers—21%—agree with the ruling, in effect believing that financial advisers should not act in their best interests.

The remaining 6% of respondents are not sure whether the ruling was good or bad.

Weekly Special Question

Now that the courts have ruled that the government cannot legislate that advisers and brokers must act in their clients' best interest, the question then becomes, "what now?"

To get our readers' feedback, last week's AII special survey question asked:

What do you think is the best way to ensure that financial professionals act in their clients' best interest?

Overall, we received 367 responses to the question.

Overall, the responses fell into four broad categories:

- Regulation (45%)
- Compensation (33%)
- Investor education (16%)
- Not possible (6%)

When it comes to regulation, 62% of readers feel that some type of fiduciary rule is what it takes for financial professionals to act in their clients' best interest.

On the topic of compensation, nearly 58% of responses stated that there should be penalties for misrepresenting clients or that firms should favor performance-based compensation. Nearly one-quarter of the "compensation" responses favor fee-only compensation.

For those who believe that education is the way in which investors will be best protected, over one-third (36%) believe that researching investment professionals beforehand is the best way to protect yourself. Another 24% of this group feel that a well-educated investor does not need to use a financial professional.

Here is a sampling of the responses readers offered regarding the best ways to ensure that financial professionals act in their clients' best interest:

- "Tie commissions to clients assets."
- "... the fiduciary rule is not the answer because it forces financial advisers to follow some 'best interest' rules established by the government. The government does not know what is in my best interest. That is up to me to judge. Essentially nothing good or valuable happens when the government takes control over what should be personal and individual decisions."
- "Mandate it through federal regulations and professional certifications."
- "Acting in the client's best interest seems the right answer, however, it may force financial professionals to recommend more conservative, safer, lower return solutions for fear of being sued."
- "'Best interest' is not a measurable term. There are too many factors that would make any investment not in the 'best interest. 'Suitable' is a measurable standard which allows some flexibility in the decision process. It coincides with the current investment decision process."

- “There is no way to ensure this. The rule will lead to subjective opinion lawsuits.”
- “There is no way to protect yourself other than to look out for your own best interests.”
- “Clients must insist that their advisers adopt fiduciary standards of investment and the clients must be ready to quit those advisers who will not do so.”
- “First, choose your investment adviser very carefully. Ask lots of questions. Second, become financially savvy. You don’t need to become an investment expert but you do need a basic understanding of investment products and how they might fit your objectives.”

Everybody has an opinion! Why not give us yours? Participate in our weekly member poll, updated every Monday, and see the results online at www.aaii.com/memberquestion.