

Government Relations Committee

JENNIFER RAGBORG, CFP® • GOVERNMENT RELATIONS DIRECTOR

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Fiduciary Retreat - July 8th WE WANT YOU!

*By Jennifer Ragborg, CFP®
Government Relations Director*

You are invited to a “Fiduciary Retreat” on **July 8** at 1 PM for the balance of the afternoon. Your Government Relations Committee is sponsoring this retreat to allow members the opportunity to become engaged in developing a grass-roots movement within our financial planning community to support integrating a “fiduciary ethos” into our daily practice.

Prior to the retreat, you are expected to read the new book by Don Trone, Fiduciary Ethos, which is available from this website: <http://fiduciaryethos.bpotechonline.com/shop/pc/viewPrd.asp?idproduct=25>

The foreword was written by Keith Loveland, our Minnesota expert. Other members of our Committee have said the book “reads well, concrete action steps, and actually interesting!”

More detail of the logistics will be sent to you after you RSVP to Jennifer Ragborg, Government Relations Director at jennifer.ragborg@lctcfp.net **no later than July 1st.**

We are excited to have you join us as we dig through what it all means to be a fiduciary and how we can make it part of our daily practice that can be readily expressed to our clients.

My mom called the other day. “What’s a fiduciary?”

*By John Bergstrom, CFP®, ChFC, CLU
Government Relations Director*

My mom called the other day. There was no “Hello”, no “How are you?” just a simple- “What’s a fiduciary?”

There’s my bellwether. When my 80 year old mother makes a reference to something in my Boomer Generation, then I know it’s a dead horse due for a little more beating. She casually threw out the term –fiduciary- that in the past was strictly my workplace jargon.

Now I know we’re mainstream. So without skipping a beat, I tell her, “That’s what I am.” I didn’t give her the whole “professional putting clients’ interests first, avoiding conflicts of interest, providing clear disclosure, etc.” I explained that as a financial planner, we’re obligated to act as a fiduciary- or in a manner which holds me to a high standard of care when dealing with clients and their monetary issues. But she

(as with many in the general populace) still doesn’t quite understand what it is a financial planner actually does versus a broker. I asked why she wondered about the word and said she had read an article in the paper about brokers and a new rule that was coming out.

It’s true- I’m a fiduciary. I didn’t even think twice about it before saying it. As a CFP® and Registered Investment Advisor, maybe I’ve been conditioned to say that. But I believe I am a fiduciary- regardless of whose definition we’re using. And you have to admit, when the topic of fiduciary standards and practice word reaches my local Star Tribune, Washington is causing waves in Middle America! The article printed May 28 and was authored by Rachel Beck; it was a quick read and synopsis of the bill coming to fruition. I say that because both the House and the Senate have passed their versions of the bill (officially H.R. 4371). Now they have to reconcile some language differences via a “House Senate Conference Committee”. Pity the Committee staffer these days; you know they’re in for some heavy lifting!

Here is one such language-contention between the House bill and Senate bills:

- Under the House approach, the Securities and Exchange Commission (SEC) would write a rule requiring broker dealers and insurance agents to act in the best interests of their clients. The broker-dealer would disclose conflicts of interest to retail clients when providing investment advice. This is the same standard of care investment advisers must use.
- The Senate bill on the other hand would direct the SEC simply to study the issue and get back to Congress on their findings. They could later implement additional rulings, but only under its existing jurisdiction and/or authority. (Critics of this plan argue there is no fiduciary standard of care, just the SEC asking for brokers to abide by a level of care or standards.....(note no mention of the “f” word.)

The House version of the bill’s language is preferable.

Representative Barney Frank, D-Mass., the chairman of the House Financial Services Committee, has said that he hopes a final bill will be completed by June 30. (Congressman Barney Frank and Senator Christopher Dodd, the chairs of the House Financial Services Committee and Senate Banking Committee, respectively, will lead the conference committee.) Perhaps a bill could hit President Obama’s desk for signature before I head out for July 4th fireworks.

In addition to the bills' sample difference cited above, there are evidently large issues to address as well: derivatives regulation, a proposed consumer protection agency, and a "Volcker Rule" (named for the former Fed Chairman). The Committee's negotiations on these issues will no doubt consume much of Frank's and Dodd's time. So the fiduciary language rule may not be a big ticket item for the Committee- unfortunately. The last thing I'd want to see is the fiduciary language swept away as a result of 'bigger fish to fry' or even worse as a bargaining chip (see my p.p.s. below). But with looming anti-Wall Street sentiment, we have to at least acknowledge that the public is not generally consumed with advisor titles and who must to follow a standard of conduct and who doesn't.

So in order to avoid fiduciary-language-dilution, and possibly bend the ear of a Committee member via a Minnesota grassroots effort, I would urge you to take up pen, pencil, keyboard, etc. and contact Rep. Collin Peterson. Yes- we Minnesotans have a voice on the Committee! Representative Peterson (7th District) was chosen as a Committee member; he also serves as the Chairman of the House Agriculture Committee. Rep. Peterson's address is: 2211 Rayburn HOB, Washington, DC 20515. His phone number is: 202-225-2165 (MN number is 218-847-5056).

The fiduciary standard/language obviously carries quite a bit of weight- not only for Registered Investment Advisors, but for all those providing investment advice- broker-dealers and insurance agents alike. The language is important, because it sets a bar, or rather a standard of care. It is this standard of care that consumes the public. That public perception cannot (chooses not to?) draw differences between the terms "suitability" and "fiduciary" should not matter. There should be no lesser standard of care, or lower proverbial bar for those providing investment advice- regardless of what shingle they hang.

The language of HR4173, specifically the language pertaining to fiduciary responsibility is nothing new. Read below the excerpt from Securities and Exchange Commission v. Capital Gains Research Bureau, Inc., et al. Supreme Court of the United States 375 U.S. 180 (1963): (NOTE THE DATE!)

"The Investment Advisers Act of 1940 was the last in a series of Acts designed to eliminate certain abuses in the securities industry, abuses which were found to have contributed to the stock market crash of 1929 and the depression of the 1930's.⁷ It was preceded by the Securities Act of 1933,⁸ the Securities Exchange Act of 1934,⁹ the Public Utility Holding Company Act of 1935,¹⁰ the Trust Indenture Act of 1939,¹¹ and the Investment Company Act of 1940.¹² A fundamental purpose, common to these statutes, was to substitute a philosophy of full disclosure

for the philosophy of *caveat emptor* and thus to achieve a high standard of business ethics in the securities industry.¹³ As we recently said in a related context, "It requires but little appreciation . . . of what happened in this country during the 1920's and 1930's to realize how essential it is that the highest ethical standards prevail" in every facet of the securities industry. *Silver v. New York Stock Exchange*, 373 U.S. 341, 366.

".....essential...that the highest ethical standards prevail....in every facet of the securities industry."

That about sums up my fiduciary language in the House bill. So this too will pass –pun intended? - and we'll be operating (hopefully) on a level playing field. And I can get my mom's conversation back to the finer things in life...like how she did in her bridge game last night.

p.s. If you really want to see how sausage is made, you can view H.R.4173 at the following link: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173pp.txt.pdf

p.p.s. The decisions and events of this Committee will move pretty fast. As I write this, yet another delay was announced by Senator Dodd on the fiduciary language decision. That tells me it's not getting as close to the front-burner as I would like. This would be a great –GREAT- time to contact anyone you know who is a constituent of the Committee's Senate members and tell them to support the House language. Here is a list of the Senate members of the Conference Committee: (complete with phone number)

- Christopher J. Dodd Chairman (D-CT) ... 202-224-7391
- Tim Johnson (D-SD) 202-224-5442
- Jack Reed (D-RI) 202-224-4642
- Charles E. Schumer (D-NY) 202-224-6542
- Richard C. Shelby (R-AL) 202-224-5744
- Mike Crapo (R-ID) 202-224-6142
- Bob Corker (R-TN) 202-224-3344
- Blanche Lincoln (D-ARK) 202-224-4843
- Patrick Leahy (-VT) 202-224-4242
- Tom Harkin (D-Iowa) 202-224-3254
- Saxby Chambliss (R-TN) 202-224-3521
- Judd Gregg (R-NH) 202-224-3324

