<u>Court upholds protections for Retirement Investors</u>

Dear Mr. Premack: I saw a snippet in the Express saying that President Trump issued an Executive Order to void a federal rule protecting those investing for retirement. I know those rules would have protected many people from financial exploitation. Do you have more information on what we can expect? – BP

In February 2015, then-President Obama sought to protect people who are saving for retirement. The US Department of Labor (DOL) proposed the Fiduciary Duty Rule to comply. The proposed Rule wound its way through the rule-making and public comment maze, with a planned effective date in April 2017. However, after the Rule was finalized, a group of business and insurance interests filed suit to declare it illegal.

Currently (before the Rule becomes effective), it is legal for a financial advisor to receive commissions on annuity sales so long as the sale was "favorable to the consumer as an arms-length transaction" and the compensation was "reasonable". This meant that nearly any sale could pass muster, and nearly any industry approved commission was allowable.

The Rule would impose a higher standard on the financial advisor. It would make the advisor a fiduciary and require the advisor to act in the best interest of the investor when dealing with annuity sales under 401k and IRA accounts. This would help avoid abuses and end strong-arm sales techniques which are too often used.

The lawsuit brought by the business and insurance interests was decided on February 8, 2017 by Judge Barbara M.G. Lynn, Chief Judge of the US District Court for the Northern District of Texas, Dallas Division.

The business and insurance interests had argued, in part, that advisors should not owe a duty of loyalty or prudence to their investors. They argued that financial advisors who receive sales commissions are not rendering investment advice for a fee.

The court examined the Rule and the statutes passed by Congress which underpin the Rule, and decided that those arguments were not supported. The court in an 81-page decision dismissed the claims brought by the business and insurance interests, and upheld the validity of the Fiduciary Duty Rule.

However, a few days earlier on February 3, 2017 President Trump issued a Memorandum on the Fiduciary Duty Rule. The DOL was instructed to re-examine the Rule to "determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice". If the new Trump appointees in the DOL decide that the Rule "is inconsistent with the priority" identify by the White House, the DOL must rescind or revise the Rule.

It is likely that, despite the court's Order finding the Rule follows federal law, the DOL will (at a minimum) delay implementing the Rule and delay the consumer protections that the Rule offered. It is also likely that the new DOL administrators will find the Rule does not match the Trump White House priorities, and will thus rescind the Rule. Hence, as a consumer, you must be doubly alert when annuities are offered to you as an investment for your retirement account.

Paul Premack is a Certified Elder Law Attorney with offices in San Antonio and Seattle, handling Wills and Trusts, Probate, and Business Entity issues. View past legal columns or submit free questions on legal issues via www.TexasEstateandProbate.com or www.Premack.com.