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Management Magazine

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Ethics in Action

June 19, 2017

About 66 million Americans are expected to retire from 2015 to 2025, according to the Life Insurance and Market Research Association (LIMRA). Whether these individuals will be able to do so comfortably depends not only on how much money they save but also on the quality of advice they receive from their financial advisors.

Unfortunately, that advice hasn't always been up to par, according to the U.S. Department of Labor. In April 2016, the department issued a new rule requiring all financial advisors who oversee retirement accounts to act under a "fiduciary standard" — including advisors who work on commission, such as broker-dealers.

"A fiduciary standard is the highest standard of care because it requires advisors to put clients' interests above their own," explains Sally Mullen, Chief Fiduciary Officer for U.S. Bank Wealth Management. "Prior to the new rule, broker-dealers usually applied a 'suitability standard' instead of a 'fiduciary standard,' which requires the advisor to make recommendations that are in the client's interest — but not necessarily recommendations that put the client's interest above their own."

This new fiduciary rule, which is expected to go into effect this year, officially expands the definition of "investment advice fiduciary" under the Employee Retirement Income Security Act of 1974 (ERISA). In doing so, it automatically elevates all financial professionals who work with retirement plans or provide retirement planning advice to the level of a fiduciary, eliminating potential conflicts of interest by legally requiring them to put clients' best interests first and other considerations second.

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However, what will be a major transition for many financial advisors will be business as usual for U.S. Bank Private Wealth Management, as national banks have long applied a fiduciary standard as a requirement for the trust powers granted them by the federal government.

"The fiduciary standard is not new for the bank," Mullen says. Under the new rule,
broker-dealers are required to apply a fiduciary standard to retirement assets. Banks acting in a fiduciary capacity, however, apply the same standard to both retirement and nonretirement assets, as well as to related disciplines, such as trustee services and trust administration. As a result, clients can count on objective advice to help them create a more productive wealth portfolio.

U.S. Bank's Fiduciary Role

When describing it to clients, Bradley Klein, Regional Trust Manager for U.S. Bank Wealth Management, will tell them the fiduciary standard comes down to instinct.

"Whenever our trust officers or portfolio managers consider a transaction, their first instinct is to ask themselves what's best for their client — not what's best for the bank," Klein explains.

That can have a powerful impact, he says. "When we're sitting down with a client, we believe the advice we're giving them will benefit them the most, not U.S. Bank."

In particular, there are three tenets that embody how U.S. Bank addresses its fiduciary duty: continuity, objectivity and professionalism.

Continuity: 150 Years and Counting

The first tenet, continuity, is especially important in light of the Department of Labor's new rule, according to Daniel Wani, Managing Director, Trust and Wealth Planning for U.S. Bank Wealth Management. Wani explains that as many broker-dealers scramble to embrace the fiduciary standard, they'll have to develop new procedures, retrain personnel and establish a fiduciary culture. U.S. Bank, on the other hand, has a long-standing tradition of fiduciary responsibility to its trust and investment clients.

"This is the way we've been doing business for 150 years, and it's the way we'll continue doing business," Wani explains. "We have infrastructure already in place, and I'm not talking about bricks and mortar. I'm talking about consistent, repeatable processes, policies and procedures that guarantee continuity of practice from office to office across the country."

U.S. Bank's continuity is particularly valuable to clients who have or are interested in dynasty trusts, which allow them to pass their wealth from generation to generation indefinitely.

"In Delaware, South Dakota and other states, you can have a trust that, for all intents and purposes, runs forever," Wani continues. "If you're going to create a trust like that, you want a trustee who will be there for future generations — and we've been around for 150 years."

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Equally as important as institutional continuity is individual continuity. "Personally, I've been working with some families for almost 20 years," Klein says. "I know them, and they know me. That allows me to do more for my clients because I understand the nuances of their circumstances. We have a relationship.

Objectivity: Removing Personal Bias

This type of relationship with clients can help trust officers make unbiased, better decisions, according to Klein, who considers objectivity just as important a fiduciary differentiator as continuity.

"A lot of people create trusts because they want there to be guidance for future generations about how to manage their wealth," Klein explains. "To provide that guidance, you really need someone who's impartial and can make

difficult decisions, carry out the terms of the trust and balance the interests of the current and next-generation beneficiaries."

Indeed, U.S. Bank as a corporate trustee may be better positioned to make unbiased decisions than emotionally invested family members.

"We're all individuals with our own views of the world, but our goal is to take personal biases out of the decision-making process," continues Klein, who says the trust team sometimes uses a committee process to ensure impartiality. "As decisions get larger and more impactful, we add layers of review to make sure they're the right decisions for our clients."

Professionalism: Making Smart Choices

The final tenet of U.S. Bank's fiduciary duty — professionalism — ensures that the people who constitute those layers of review have the knowledge and experience to make sound decisions.

"We have a depth and breadth of experience and expertise," Wani notes. "Just about any business concern, investment concern or trust concern a client has, we have the resources to address it." He explains that U.S. Bank Private Wealth Management's 360-degree view of financial decisions is due to the range of experience among its team members.

The Fiduciary Standard in Action

U.S. Bank's role as a fiduciary isn't merely theoretical — it's a practice that has been making a difference for years.

Wani, for instance, recalls a client who wanted to diversify his investment portfolio by adding fixed income instruments. His previous broker had subsequently recommended tax-exempt municipal bonds — but purchased a municipal agency's entire bond offering, creating a large concentration of those bonds in the client's portfolio.

"It was by no means in the client's best interest to have that kind of concentration," Wani said. "As a fiduciary, we never would have done that. Of course, we later diversified that holding when he became our client."

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Similarly, consider the example of a twice-married man who dies, leaving behind a trust whose beneficiaries include his second wife and the children from his first marriage.

"Sometimes, that is not a simple relationship," says Mullen, the Chief Fiduciary Officer. "There might be varying objectives and agendas in the family, and our role as trustee is to carry out the grantor's intent. For example, we can't invest the trust to produce maximum income for the wife because that potentially could disadvantage the children if the account doesn't grow.

"But on the flip side, we can't invest it strictly for the children because the spouse has needs, and the grantor intended her to receive cash flow. We have to use the trust document and our own risk management processes to have dialogue with all the interested parties and balance their interests appropriately."

Finding the Right Fiduciary

Often, the sign of a good fiduciary is the willingness to say "no."

“Say a beneficiary has $1 million in a trust dedicated just to them,” Wani says.

“If they want to spend $500,000 on a home but have no way to support that home [other than with trust money], we’re not going to authorize that [because it could deplete the trust].”

“For example, we spend a lot of time talking to clients about gifting,” Klein says. “If the bank were being selfish, it wouldn’t want clients to make large charitable or individual gifts because that money will leave their account and affect its annual revenue from that client. But if it makes sense from a tax and planning perspective, we’ll still encourage our clients to make those gifts because it’s the right thing for their situation.”

Ultimately, the fiduciary standard is all about protecting the client’s assets — and, sometimes, even the client. “We had one young client who had a number of accounts with us, and we discovered he had gambling issues,” Klein recalls. “Because we had a relationship with the family, we were able to get that young man to come in and seek help through external sources. There was no benefit to the bank in doing that; it was purely about the individual. In the long run, it worked out amazingly well, but it could have been a devastating result had he not had that circle of fiduciaries around him.”

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