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**To:** EBSA, E-ORI - EBSA

**Subject:** RIN 1210-AB32

To whom it may concern,

I own my an independent, fee based RIA firm and though I agree with the intent of this proposed rule, I am concerned about several key points and how they will limit the consumers' access to financial advice.

- The Department of Labor released a proposal to define who is a fiduciary when advising retirement savers, including IRA owners. The rule and the accompanying exemptions are complex and costly.
- The rule defines all advisors who provide advice in exchange for compensation as “investment advice fiduciaries.”
- The rule requires a contract in order for advisors to be paid third party compensation such as commissions or revenue sharing fees under a new “Best Interest Contract” (BIC) exemption.
- The BIC exemption is unworkable in its current form as it limits education, does not include advice to plan distributions or rollovers to other plans, (including IRAs), and requires copious amounts of data and disclosure. Overall there will be less access and more costly advice.
- The DOL’s Notice and Comment period is only 75 days, far too short a time to responsibly and thoughtfully provide feedback to the DOL.

I can tell you from my experiences meeting and working with clients for six years, that how I am compensated does not impact my ethics. Those professionals who do not put the client's best interest first will be just at likely to take advantage of this proposed rule if it goes into effect as it is as they are to abuse their power in within current guidelines. I have come across numerous people throughout my career that had fiduciary agreements with advisors who were not acting in their best interest. Please read my example below:

- I was asked by a client to review the investment portfolio of her retired, widowed parent because she didn't feel she was receiving appropriate service on her investment portfolio. This particular client had significant net worth and was still invested in only entirely bonds and cash equivalents that they had sold out of equities to purchase in late 2008. The client had not received more than a quick annual phone call asking if they wanted to make any changes to their portfolio, which of course they didn't understand well enough to request additional assistance. When I became acquainted with the individual it was late 2012 and anyone in my industry would have been appalled by finding a client still so conservatively invested since the fall in the market in 2008. The person was not being serviced by her current advisor who was affiliated with the same company that managed her previous employers 401k plan. This

individual couldn't recall ever signing any contracts with the other advisor, nor was she aware of the advisory fees being paid out of her portfolio quarterly. Aside from that, the individual had also not been through any type of financial planning process and had major risk exposure in the area of long term care. If not for my ability to sit down with this person, which I did during my time with a previous insurance broker/dealer when I did not take on fiduciary responsibility with clients, I would not have been able to make sure that all their estate, long term care, and financial planning needs were met.

The financial services industry is the private sector solution to a government problem - entitlement programs. Though my own practice mirrors many of the items in this proposed ruling, I would never have been able to get to the point where I can operate as such without first being allowed to assist my clients with their retirement planning without taking on fiduciary responsibility. This is important not only because I am a member of an increasingly aging profession and we need to train and educate new, young advisors. But also because to this day, there are prospective clients who I decline to work with because I can see that they are not well suited for me to take on that fiduciary responsibility. Example:

- I had a prospective client who is far behind in saving for retirement and felt that overly aggressive investing and trying to time the market would be the only way they could 'catch up' to where they need to be. They bragged that they had earned 18% in the market this last year through their own trading activity and wanted to know what returns they could expect if they worked with me. I know very successful hedge fund managers that cannot boast those returns, and it is often only a matter of time until these uneducated day traders may errors and look significant amounts of retirement savings that would have been better protected from market volatility in a well allocated portfolio. In the meantime, none of the individual's risk based needs had been addressed. Their budget was so limited by debt that they would not contribute the necessary money to own an adequate amount of life and disability insurance to protect their family. Sadly, this prospective client is someone I come across all too often, and it is not in most people's nature to reach out to an advisor for help until they are in so much need for assistance that it is often too late. Though I sat down with this person and advised them on what to do, I would not take them on as a client as they would not listen to me. Personal investor behavior, along with general distrust of my industry, did, and probably will continue to, prevent this person and many like them from every being a client I would serve as fiduciary for. That, however, doesn't mean that if they want to roll over a retirement account or make contributions to an IRA that they should be prevented from doing so or have to risk costly errors doing so without professional help.

Though I do know abuse is present in our industry, it is a minuscule amount compared to those professionals who do honest, ethical work for their clients each and every day. By making it more difficult for my peers to do business, we are limiting public access to much needed resources. It is already difficult enough to convince the people I meet with to defer income to address future risks and goals. At a recent Financial Planning Association meeting, Tim Kiesling referenced a statistic that might be startling to you - only 39% of eligible employees participate in their employer sponsored retirement plans. This ruling not only places unrealistic restrictions on a large portion of an industry that does a lot

of good, but also frames myself and my peers in a very negative light. Our country does not have a fiduciary & compensation transparency problem. IT HAS A SAVING PROBLEM! I believe placing more restrictions on advisors will only make it more difficult to do business and prevent more Americans from seeking the advice they need. And though 'intelligent portfolios' or 'robo-advisors' are becoming more common, the solution to America retirement crisis is not a qualified default investment alternative, but thorough financial planning. Americans are more likely to sell low and buy high out of fear if they are trying to be their own financial or investment advisors, and that is what will happen if there are less trained professional working with them (please read Nick Murray's *Behavioral Investment Counseling* for examples of this).

I believe higher barriers to entry in my industry and more public education on financial planning would do far more good than this ruling to advance the financial health of our citizens.

Thank you,

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