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U.S. Department of Labor
Employee Benefits Security Administration
Public Disclosure Room
200 Constitution Avenue, NW, Suite N-1513
Washington, DC 20210

Dear Regulators,

In regards to the final proposal for the Participant Investment Advice regulations, I would like to offer my comments based on my ten years of professional experience focused in the qualified plan marketplace. I think the Department has done a great job of clarifying its position on the various concerns expressed by previous comments in this version. I thank you for your extensive efforts in getting this right. I only have a few points that I would like for you to keep in mind as you move forward in finalizing this effort.

First and foremost, please do not conclude your efforts in the area of the provision of investment advice to ERISA plans with this regulation. As you know, this regulation is solely focused on the arrangement when investment advice is offered to participants and beneficiaries. While I agree that is of great concern, it is quite minimal in comparison to the investment advice being delivered at the fiduciary and plan sponsor level. That area has been plagued with widespread abusive practices since before ERISA was passed. It has never been effectively addressed nor deterred and it has cost pension plan sponsors and participants billions of dollars over the years. Investment advice is delivered to plan sponsors across the nation on a regular basis which is more focused on service provider revenue and market-share goals and less focused on the best interests of the plan. These arrangements oftentimes escape fiduciary status by arguing that the information was delivered as a suggestion and for illustration purposes only. When in reality it was a recommended fund line up for the fiduciary to agree to and then followed by a mapping strategy.

Most of the industry's most prominent consulting firms are participating in costly conflicts of interest that are not disclosed. These arrangements are structured to meet the interests of the incestuous financial industry and not the plans or plan sponsors. This problem has made front page news time and time again, resulted in fines and litigation, yet has never been properly addressed by the Department and therefore allowed to continue. I encourage this administration to finally take a stand on "true" independence and stop allowing this to go on if it is really committed to protecting employee benefit plans. The wolves should no longer be allowed to dress as sheep and escape liability for their professional misconduct.

That said, in regards to the current investment advice proposal I would like for you to consider the following very logical points:

1. Who will more than likely be delivering this service on a widespread basis?

   Answer: Large Bundled Service Providers

2. Who lobbied the heaviest for this provision and exemption?
   a. Answer: Large Bundled Service Providers
   b. Answer: And the industry associations that lobby for them while claiming to lobby for millions of participants.

3. Why do you think the large service providers are so concerned with this issue?

   Answer: Not because they are sincerely concerned about the well-being of the everyday American worker as marketed, but in reality because they stand to make money from the outcome of this service.

4. How do the big service providers make money from providing this service?
   a. Answer: One way is to set up a computer model internally or to partner with a service that has already designed one and then charge participants for the service.
   b. Answer: The other way is by stacking the deck. It is not rocket science to figure out what the model is going to suggest in terms of fund allocation. Any professional can do a back of the napkin calculation on which asset classes will receive the bulk of the assets and then put their proprietary and/or higher revenue producing vehicles into those classes. This is done every day behind the scenes in these big institutions and any insider could tell you that, off the record of course. This regulation just makes it that much easier.

5. Is there any real standard for mandating that quality investment options are all that make up the investment menu?

   Answer: Well, look at the Deere case and you have your answer. The industry has long bluffed the plan sponsor world and regulatory agencies into believing that asset allocation is really all that matters and so therefore it is irrelevant that their managers repeatedly fail to meet reasonable performance standards. Service providers routinely bury proprietary funds into these plan menus, some even brand new with no performance history and others that regularly underperform benchmarks and peer groups. They get away with this by distracting decision makers and regulatory agencies away from performance and focusing on asset allocation. This is flawed for countless reasons; however, the most obvious is that no one invests money without one and only one concern – to earn a return. As long as we continue to allow junk to be buried inside 401(k) plans, this computer model approach works just as it is designed to do – it predicts allocation and ensures profit models are achievable.

6. How does this affect the investment advice that is prevalent, yet not admitted to occur, in the call centers?

Answer: First, it must be acknowledged that in fact, investment advice is occurring every day in call centers when participants and beneficiaries are coerced into rolling over into proprietary products and or purchasing other products offered. Call centers are a profit machine for the big providers and do not always provide participants with products that are in the best interests of the callers. The commissions and performance bonuses offered to call center representatives are undoubtedly playing a key roll in their aggressive sales tactics.

I cannot emphasize enough how critical it is to always “chase the buck” when the Department is trying to improve the experience for participants. Keep in mind you are usually doing so in response to lobbying efforts which are not financed without the hopes for huge industry rewards.

I will state that the least of my concerns is the investment advice services that will be offered through independent advisors and onsite personal education programs staffed by independent advisors. However, it is not likely this arrangement will be commonly adopted as the industry is dominated by the larger bundled providers. The Department should be very mindful of the lacking independence that is prevalent in the industry. The creation of a separate entity to offer a computer model designed to produce the allocation the sales team desires does not mitigate this issue.

The only way to fix the issues outlined above in this situation is to follow this regulation up with a brand new focus, a sincere focus on raising the bar for investments that are offered to our American workers. We need higher standards, independence requirements, defined minimum processes and improved imposition of liability.

I look forward to seeing new efforts on behalf of the Department to address long running issues that this regulation will only make easier on those who are participating in such schemes.

Respectfully submitted by,

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