PUBLIC SUBMISSION

Comments Due: January 02, 2024
Submission Type: API

Docket: EBSA-2023-0014
Definition of an Investment Advice Fiduciary

Comment On: EBSA-2023-0014-0001
Retirement Security Rule: Definition of an Investment Advice Fiduciary

Document: 1210-AC02 petition 008

General Comment

The Honorable Lisa M. Gomez
Assistant Secretary of Labor
Employee Benefits Security Administration
U. S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: RIN 1210-AC02

Assistant Secretary Gomez:

I am writing to express serious concerns with the Department of Labor's (the "Department") proposed Retirement Security Rule: Definition of an Investment Advice Fiduciary and Associated Prohibited Transaction Exemption Amendments (collectively, the "Proposal"). For the reasons summarized here and explained in more detail in our comments below, I strongly urge the Department to withdraw this fundamentally flawed Proposal. I would also like to know why no one is listening to the other side of this issue. It appears that you have made a decision without giving it the full attention of both sides that it deserves.

As a financial security professional, I am dedicated to assisting American families, individuals, and small businesses within my community and help them fulfill the dream of financial security, which includes a secure and dignified retirement. I provide advice to create holistic financial plans that serve my clients' best interests for a secure financial future. Independent research by Ernst and Young proves that the combination of life insurance, investments, and annuities deliver objectively better outcomes for consumers. As a member of Finseca, I believe deeply in the mission of financial security for all.

The Proposal, however, will have a detrimental effect on the financial security profession, limiting the ability to provide holistic retirement planning and the essential financial security that clients are seeking. It significantly broadens the definition of investment fiduciary advice while restricting the available exemptions relied upon by financial security advisors. The Proposal overlooks the consequences both for the financial security profession and the Americans who depend on us.

The Proposal Limits Access to Advice

Imposing a fiduciary-only, fee-only model for advice would exclude retirement savers, especially those with low- and middle-income, who lack the required account minimum, denying them essential retirement advice. The proposal will lead to increased costs for financial advice, coupled with a reduction in product choices and a decrease in the number of available advisors. These risks are not theoretical—the Department's 2016 fiduciary regulation ("2016 Rule") caused reduced access to financial assistance for as many as 10 million accounts holding $900 billion in assets.

The Proposal Suggests My Work is "Junk"

The service I provide to my clients and their families is valued as indispensable for their families and businesses. Consumer choice of transparent fees for accessing that advice is NOT a "junk fee." One size does not fit all: commission models better serve some retirement savers, while fee-based cost models better serve others. Consumer should have access to both models to choose what best serves their individual needs.

The Proposal Seeks to Ignores New Protections in Place Developed by Federal and State Regulators

The playing field has changed since the DOL's last attempt in 2016. The SEC, FINRA and nearly all state insurance regulators have adopted new guidance and regulations that improve consumer protections, including adopting best interest standards, and enhanced disclosures. The SEC's Regulation Best Interest has been in effect since 2019, and the NAIC Model Act for Annuities has been adopted by 40 states. What evidence do you have of a widespread problem, inefficiency, or gap in the current regulatory structure?

The Proposal Makes it Harder to become a Financial Security Professional

The regulatory burden is already a substantial weight on my practice, my clients, and my ability to serve more people. I shudder to think of the impact the Proposal will have on someone new to the profession and just starting out. I also believe your rule will limit opportunities for mentorship and apprenticeship of new advisors by more senior ones.

The financial security profession currently maintains stringent qualification and licensing requirements. However, the Proposal's additional and excessively burdensome procedures, aimed at addressing a few "bad actors," will significantly impede existing professionals to continue their careers and discourage new entrants, which is troubling as we currently need more financial advisors, not fewer. In fact, the profession has been flat – despite the $12 trillion dollar gap between what people have and what they should in protection.

I urge you and the Department to withdraw the proposed final regulation and proposed amendments to protect the interests of America's workers, families, and retirees. Please take the time to look at our side!

Thank you for your consideration.