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Definition of an Investment Advice Fiduciary

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

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Submitter Information

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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

Dear Honorable Gomez,

The biggest problem with the current fiduciary proposed rule is that it will decrease the advice and information available to the smaller investor, usually someone just starting. Without an advisors help they can easily be confused on what to do. Confusion has a cost and that cost is almost in procrastination. The client is not sure what to do, so they decide to wait and do nothing. That cost is terrible to their retirement planning. An example of this are the automatic 401 K enrollments where employees must opt out. It forces them to save for themselves as soon as possible. I have added my association's talking points below if you need another reference, I am sure you have received this information multiple times.

I am writing this letter to express my fears over the new U.S. Department of Labor (DOL) proposed fiduciary rule that will threaten my ability as a financial professional to serve the many lower and middle-income Main Street families who are currently able to access from me and my colleagues sound, unconflicted financial advice to advance their financial and retirement security.

This new rule proposes to revise the current fiduciary rule under the Employee Retirement Income Security Act (ERISA), governing the advice that financial advisors provide their clients. This proposed revision largely resurrects the failed 2016 DOL "fiduciary-only" rule that limited savers' choice of advisors and investments by imposing excessive amounts of costly red tape and duplicative administrative requirements on the investment transactions they make for their retirement.

With this proposed revision, DOL ignores the real-world experience decisively demonstrating that the 2016 DOL fiduciary rule significantly harmed lower and middle-income workers before being thrown out in 2018 by a federal appeals court. The adoption of the 2016 fiduciary rule resulted in more than 10 million smaller retirement account owners losing the ability to work with their preferred financial professionals. Main Street savers could simply not afford to retain advisors under the fiduciary-only model of regulation. Moreover, if DOL adopts a new rule that is like the 2016 rule, recent research concludes the retirement savings of 2.7 million individuals with incomes below $100,000 would plummet by $140 billion over ten years. Black and Latino retirement account owners would be among the hardest hit, increasing the racial wealth gap by 20 percent.

Since the 2016 fiduciary rule was invalidated, regulators at the federal and state levels have adopted significant new regulations that directly address the conflicts of interest that DOL asserts it is seeking to address with its new proposed rule. The U.S. Securities and Exchange Commission (SEC) adopted Regulation Best Interest (Reg BI), which requires all broker-dealers and their registered representatives to always act in their client's best interest without putting their own interests first. In addition, more than forty states have now enacted an updated National Association of Insurance Commissioners (NAIC) model regulation that requires insurance producers to satisfy a best interest standard that aligns well with Reg BI. In addition, DOL adopted its own new rule in 2020 that complements the federal and state regulatory regime.

Adoption of this proposed rule is both dangerous and unnecessary. It is dangerous because it will leave millions of Main Street investors on their own in trying to achieve retirement security for themselves and their families. It is unnecessary because there are already federal and state regulatory structures to protect consumers, and DOL has provided no evidence that consumers are not being protected by the existing rules.

I ask that you please withdraw the proposed final regulation and proposed amendments to protect the interest of Main Street Americans.

Sincerely,
Marty Berger
Iowa