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Definition of an Investment Advice Fiduciary

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Retirement Security Rule: Definition of an Investment Advice Fiduciary

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Submitter Information

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General Comment

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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.

As a financial professional, I am dedicated to assisting families, individuals, and small businesses within my community fulfill on their 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 insurance based products & investments, deliver objectively better outcomes for consumers.

The Proposal will have a detrimental effects, limiting the ability for holistic retirement planning and the essential financial security that clients are seeking by squeezing out the insurance based products. The proposal 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 some of 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 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
I shudder to think of the impact the Proposal will have on someone new to the profession and just starting out. I believe your rule will limit opportunities for mentorship and apprenticeship of new advisors by more senior ones. The result will be financial advice will become even more confined to the asset management (investment) space. As highlighted in the Ernst & Young study as well as others, the ideal retirement plan for an individual should include both investment products and insurance based (actuarial science based) products. A plan lacking either the power of investments or the power actuarial science (insurance &/or annuities) is less than optimal. This is not opinion. This fact. Several studies including the one from Ernst & Young prove that. It's the same reason why the old fashioned defined benefit pension plans provided a far greater level of financial security than 401k's.

The financial security profession currently maintains stringent qualification and licensing requirements. While the proposal is aimed at addressing a few “bad actors,” it 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.
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.

Thank you for your consideration

David Bibicoff