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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

Document: 1210-AC02 comment 00294 Scanlon 01012024

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 Assistant Secretary Gomez,

I am writing this letter to express my concern over the new U.S. Department of Labor (DOL) proposed fiduciary rule that will negatively impact my ability to serve lower and middle-income families. Currently they can 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 ERISA, governing the advice that financial advisors provide their clients.

• the proposed revision largely resurrects the failed 2016 DOL “fiduciary-only” rule that limited savers' :
o choice of advisors and investments by
o imposing excessive amounts of costly red tape and duplicative administrative requirements on the investment transactions they make for their retirement.

The failed 2016 DOL fiduciary rule would have harmed lower and middle-income workers. If the 2016 fiduciary rule were in place it would have:
• resulted in more than 10 million smaller retirement account owners losing the ability to work with their preferred financial professionals because
o they could simply not afford to retain advisors under the fiduciary-only model of regulation.
o 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 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
• additionally, DOL adopted its own new rule in 2020 that complements the federal and state regulatory regime.

Adoption of this proposed rule is unnecessary due to the negative impact it would have on lower-income investors.

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 our lower-income clients.

Sincerely,
James M. Scanlon, AIF
Florida