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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

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,

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.

After 20 years in the retirement side of financial services - and another 11 years before that in the property/casualty and financial services side - here is what I can tell you for sure:
1. If people have to pay to sit down with someone - they won't unless they make a lot of money. A fee based planning model is very difficult for younger people starting out - and families of modest ($80,000 or under family income).
2. People who work with an advisor over time - do better. Fidelity, Vangard, Earnst & Young studies have all indicated that planners - and insurance products (like annuities) help clients to achieve more success.
3. Financial advisors today are aging out of the profession. Anything that makes it more cumbersome or risky to continue in the profession will push additional professionals out of the business and will discourage younger people from entering the profession.
4. Would you go to the dentist if you had to pay to go? Research has shown that regular appointments improve oral health and overall health. Because its "free" (paid by insurance) people go for preventative work. If people have to pay for the time of professional advice, they won't ask for help as often and won't experience success as often. Even worse, they may not work with an advisor at all. A younger client came to me after his parent's advisor said they wouldn't work with him because he didn't have at least $250,000 to invest. "How am I supposed to have $250,000 to invest if no one will help me?" is what he asked me. We are helping him and he is now very close to $50,000 of invested assets after 3 years.

Happy to answer any questions you may have on what it means to be an advisor to main street families. Just ask!

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.

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

Sincerely,
Andrea Nameche
Ohio