REQUEST TO TESTIFY

To the Employee Benefits Security Administration

RE: Docket No. EBSA-2023-0014 Hearing, Meeting, Proceedings, etc.: Retirement Security Rule; Definition of an Investment Advice Fiduciary and Associate Prohibited transaction Exemption Amendments

Name:	Donald K. Jones, BCF - Board Certified Fiduciary
Title:	Founder, Fiduciary Wise, LLC
	ERISA 402(a) Named Fiduciary and ERISA 3(16) Plan Administrator fiduciary firm
	Steering Committee for the Committee for the Fiduciary Standard
	Founder and first Chairperson for the Committee for Board Certified Fiduciaries
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Organization:	My testimony is my own and will not reflect the views of any organization
Written Comments:	Not yet submitted

Testimony outline:

I was involved in my first retirement plan in 1973, that's right, pre-ERISA, and now over 50 years later I suppose I have been involved in over 5-10,000 ERISA plans. But approximately 15 years ago I decided to leave corporate America in various service provider capacities to become an independent ERISA 402(a) Named Fiduciary, because I was convinced the financial industry had been less than honest with the plan fiduciaries, plan participants, and the beneficiaries that plan fiduciaries dealt with.

Now my firm has nearly a thousand plans for which we are the ERISA 402(a)Named Fiduciary, and nearly $ 2 billion in assets. We do not manage the assets, as that would be a conflict. We oversee the service providers and hold Plan

Administrative Committee meetings with the Plan Fiduciaries, the 3(38) investment manager or 3(21) investment advisor, recordkeeper and TPA.

In 2020 we did a survey of our current plans and found the following:

Average reduction in plan fees:	*25 basis points*
Average improvement in investment performance:	*56 basis points*
Total benefit to plan participants	*81 basis point*

Think of what an extra 81 basis points annually would do for every plan participant in an ERISA plan!

The main reason that so many plan participants receive non-fiduciary services that are not the "highest standards known to law" is that so many firms and individuals in the investment industry avoid their ERISA fiduciary duties by using the outdated "Five Part Test" in the 1975 definition of who is an investment fiduciary.

Testimony I would welcome to give:

1. The 1975 definition of an investment fiduciary originated in a predominantly Defined Benefit world, where the plans were managed generally by an ERISA 3(38) Investment Manager. Today's ERISA DC plans are generally managed by the plan participants and, most often, with some help by non-fiduciary brokers. The nearly 50-year-old definition of an investment fiduciary does not meet what today's retirement savers need – advice that is *solely in the best interest of plan participants*. That must be changed for the protection of the innocent and unsophisticated plan participant and their beneficiaries. And may I add, what a great job the United States Department of Labor EBSA division did on these new proposed changes.
2. The "greed" based argument that a change in the 1975 definition would limit the "choice" is false in every way.
3. The DOL's proposal to align all retirement plans under one umbrella as it relates to fiduciary governance under Title I of ERISA is not only correct, but again, in the best interest of the participants and beneficiaries.

4. The basis for all fiduciary governance is the common law of trusts (Restatement of Law Trusts (Third)) and should be the governing guidance for all fiduciaries, where ERISA is silent or unclear, for all types of retirement plans.
5. The DOL should continue to look more deeply into the financial industry's push for lifetime income because the annuities I have seen violate the Restatement Sections 90 commentaries (b),(f), and (h) 2.

Respectfully submitted,

Donald K. Jones BCF