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**To:** EBSA, E-ORI - EBSA  
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Doing what is best for the client sounds great to someone who does not understand Financial Planning.

No one is qualified to provide the advice which is best for the client. In order to give the best advice, an advisor must have expert knowledge of Bank, Insurance, and Securities products, as well as the strategies which employ those products. Furthermore, the advisor must be licensed to sell those products and to provide that advice. Moreover, there are legal and tax consequences for every investment choice that can be made. Finally, a comparison of all investment choices requires analytical skills beyond operating a calculator, or a spreadsheet. Besides being licensed in Securities and Insurance, an advisor would have to be a Lawyer, a CPA, and a Mathematician in order to provide the client with the best advice.

**The only way to protect the public is to inform them that they should consult several financial advisors before making their investment decision.**

Besides telling the client how advisors get paid, they should also list their licenses by stating:

**“I am only licensed to advise you about \_\_\_\_\_ investments. You should consult other licensed professionals for different investment options.”**

Furthermore, the client should be required to sign a statement regarding:

**Their investment objectives and risk profile, and  
That they are of sound mind and body.**

Moreover, what is best for the client, like beauty, is in the eye of the beholder, and suffers from an overabundance of hind sight. The US Constitution prohibits Ex Post Facto laws, and the punishment which could result. If very specific rules are created, they are enforceable. Vague generalities like best interests of the client effectively allow the enforcement person to define what is punishable after the act was committed, and that is a violation of the US Constitution.

**Consider a real life nightmare:**

In 2008, California Insurance agent, Glenn A Neasham, sold an annuity to an 83 year old woman. State regulations said she was not too old to buy that product. Later it was discovered that the woman had been diagnosed with dementia before she bought the annuity. She seemed normal to Neasham and his staff, and they had no indication of

her dementia. However Neasham was tried and convicted for felony theft because the California Department of Insurance determined that the transaction was illegal.

Neasham was convicted, and sentenced to 300 days in jail as well as 3 years formal probation. Mr. Neasham lost his insurance license, his reputation, his house, and a small fortune in legal fees. Eventually the criminal conviction was overturned because the appellate court decided that the prosecutor did not prove theft since the annuity sale amounted to an exchange of equal value, and the state did not prove that there was intent to steal.

At age 52, Neasham lost almost everything because some enforcement agency defined a crime after the event took place. How would you like to lose everything you worked for your entire life just because someone was given overly broad authority which was not specifically defined?

Bankers, Insurance Agents, licensed Securities Salesmen, and Registered investment Advisors are all providing investment advice; the fact that they are discussing different investment products and strategies does not change the character of what they are doing, nor their fiduciary responsibilities to the client. **The same Fiduciary rules should apply to Bankers, insurance Agents, Stockbrokers, and Registered Investment Advisors.**

It would be best for the DOL to invite the Securities Industry ( Stockbrokers, Mutual Fund salesmen, and Registered Investment Advisors), Insurance Agents (Life, Health and Long Term Care), as well as the Banking industry to propose specific tactics and investment schemes which should be banned. Each of those financial experts compete with the others. They know what the competition does, and what they would like to prevent them from doing. Then the DOL should create a committee of representatives from all three financial areas to forge a set of specific rules which are punishable.

**As an example of the real biases which dominate Retirement Income advice, consider the following:**

Some Stockbrokers are licensed to sell Life Insurance products but never sell any Insurance product except Variable Annuities. Registered Investment Advisors are not usually licensed to sell Life Insurance. Registered Investment Advisors, and Stockbrokers do not advise their clients to buy Fixed Immediate Annuities for retirement income because they lose control of their client's money (i.e. future fees and commissions) Instead, they usually advise clients to use Systematic Withdrawal as a means to provide Retirement cash flow even though **Systematic Withdrawal can and has led to bankruptcy in the past.** There is even a fallacy that a 4% withdrawal rate works. Even 4% has gone bankrupt in the past!

Insurance Agents recommend Fixed Immediate Annuities for retirement income because they cannot sell securities. The results are guaranteed, but, as you live longer that guaranty means a guaranteed loss of buying power during your retirement.

Bankers would recommend a CD ladder to provide retirement income, but Bankers cannot guarantee the interest rates on their products beyond 10 years. In the early 1990s, retirees were living off the interest on their retirement savings until interest rates went into the toilet. Their "brilliant" CD Ladder plan failed, and forced them to spend their savings. In some cases their life savings were wiped out so that they were living on Social Security alone.

Again, everyone is biased by what they know or do not know, and by how they can be paid. The only way the customer can avoid that problem is to consult with many different advisers, and that advice is the best thing which the Department of Labor can do for retirement plan investors.

Thank You,  
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