

Department of Labor  
EBSA  
Proposed Fiduciary Rule  
RE: RIN 1210-AB32, Proposed Fiduciary Rule

Your proposal is a good proposal and should be enacted with the following modifications (shown in parenthesis).

1. It imposes anew best interest contract through a legally binding contract between the advisor and the plan sponsor, plan participant or beneficiary, or IRA owner. Violations of this contract would be subject to an excise tax.
2. It would make obsolete the “suitability” test for brokers’ selling or providing an investment to a plan sponsor, participant or IRA owner. The “suitability” test is so amorphous as to be no test at all.
3. It would require that all those who provide investment products to the plan sponsors, participants or IRA owners do so only in the “best interest” of those clients or customers.
4. Further, it would require that advisors and brokers give prudent advice, not mislead the clients or customers, and charge only reasonable fees or commissions.  
(Such compensation should be fully disclosed to the clients or customers. How else can the reasonableness of fees or commissions be determined by the clients or customers?)
5. Finally it requires that policies and procedures are created to ensure that there is never an incentive to act in other than the client’s or customer’s best interest.
6. (One problem that is not addressed is the definition of reasonable.
  - a. Is it reasonable to sell a plan participant an annuity with a 10% first year commission and a 15 year surrender period where the surrender penalty is 10% each of the first three years, 5% for each of the next three years, 3% for the for each of the next five years, and 2% each year through the 15<sup>th</sup> year?
  - b. Is it reasonable to sell a plan participant an alternative investment with a 10% placement fee coupled with a 12% of annual gain fee?

Neither of these products will be purchased by a knowledgeable participant, plan sponsor or IRA owner; however, such products, modified only in degree, are sold every day to participants, plan sponsors or IRA owners who are not knowledgeable about investments but who trust. Salesmen sell; that’s what they do; and people buy. A capable and knowledgeable salesman can turn sand to gold dust and show how reasonable it really is. Many people trust. The definition of “reasonable” should be addressed.)

Thank you.