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Definition of the Term “Fiduciary”; Conflict of Interest Rule—Retirement Investment Advice

Comment On: EBSA-2010-0050-3491

Definition of Term Fiduciary; Conflict of Interest Rule-Retirement Investment

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Submitter Information

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General Comment

I would like to take this opportunity to explain why I believe that, while I agree that the Fiduciary Rule aims to protect investors and do what is best for U.S. citizens, the Rule should not go into effect as is. I have worked on the government regulation side and now I am in retirement plan compliance for an insurance company. I have served as a state securities compliance examiner, so I have seen firsthand what the business looks like and I have learned the tricks of RRs and IARs. I have also served as an EBSA investigator and believe that ERISA and the DOL truly aim to put the interests of participants and beneficiaries first.

However, if the real issue at hand is conflicted advice from financial professionals, the rule should cover more than qualified accounts. For that reason, I believe that this sort of regulation belongs in the hands of the SEC and/or state securities departments.

They have the right jurisdiction and expertise to properly enforce a rule geared towards financial professionals. They are also equipped to provide appropriate punishment through the suspension or revocation of licenses, among other things. The DOL only brings lawsuits in the most clear cut cases.

Having worked in the position that will be the same as the one that will be attempting to catch and cite violations through plan audits/investigations, I can tell you that DOL

investigators/auditors are not properly equipped or knowledgeable enough in the securities or insurance industry to understand why one investment is better than the other. By the time an investigator/auditor gets up to speed with understanding the actual investments, fee structures, commissions, etc., you will likely be looking at years for one investigation. I have witnessed and heard of DOL investigators that have had to have product and service explanations from the very person or entity that they are trying to investigate. These include Senior and Supervisory Investigators. The expertise is not with DOL, so DOL should not be the regulator.

The president should have requested input and evaluation from the SEC and NAIC rather than requesting a second evaluation from the same people that did the last one. This is a waste of time and money.

I agree that there are bad apples out there in the industry. Knowing that I know more about the plans they are selling and making so much less, doing so much more, and not getting the sweet trips is certainly frustrating. On the flip side, it is also very frustrating to see investors complaining about things in their accounts months and years later because they simply are not paying attention to their accounts, contracts, statements or disclosures. Investors need to take a more active role in and responsibility for their retirement planning. It is the stereotypical American that is ignorant enough to believe that the smooth talking rich guy in the suit has their best interest in mind instead of his own. We need more education!

Lastly, let the DOL keep their focus where it belongs; on plan sponsors/administrators. They are the ones that are ultimately responsible for the oversight of their plans service providers and investment due diligence. They are held to the fiduciary standard as well, so if they dont understand something, they need to stop, take a step back, and understand it before moving on at the advice of someone else.