

PUBLIC SUBMISSION

Received: March 15, 2017
Status: Pending_Post
Tracking No. 1k1-8v9u-w3od
Comments Due: March 17, 2017
Submission Type: Web

Docket: EBSA-2010-0050

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

Document: EBSA-2010-0050-DRAFT-15270

Comment on FR Doc # 2017-04096

Submitter Information

Name: Anonymous Anonymous

General Comment

I do not believe you can legislate away greed and self-interest. These are and have been part of human nature since the beginning and most likely will continue to be so in the future. If legislation were the answer there would never have been any Bernie Madoffs since the rules were already in place to prevent his activities but what was lacking was impartial enforcement. Many of his clients were sophisticated investors and their greed was a factor in his activities as well.

That is not to say that greed is acceptable and an adviser who operates strictly from self-interest should not be allowed to continue doing so. However, the vast majority of my colleagues are honest, hardworking men and woman who always try to do right by their clients. By opening up my profession to civil penalties, the Department has created an opportunity for the greed and self-interest of the legal profession to replace what the Department is trying to eliminate in the advisory profession. Does anyone really expect that attorneys will refrain from advertising class action lawsuits and legal action towards "deep pocketed" companies and individuals while always having their clients' best interests at heart? Right or wrong those suits are coming and in my opinion, you have only succeeded in throwing the baby (i.e. good advice specifically

tailored to individual circumstances) out with the bath water and have not fundamentally changed anything.

By all means, eliminate the problems you have already identified such as revenue sharing, load sharing, markups in principal transactions, excessive trading (These are already prohibited - why are they not already enforced?) and any other specific activities which involve "double dipping" or are not in the client's best interest. By the same token however should the client not take some responsibility themselves? Why not have the client sign a document saying they do understand the risks and reward potential of an investment, and they have read a clear and concise summation of same? Should a client not be freely allowed to choose an investment such as a variable annuity that offers the comfort of income guarantees even though they are aware of the additional cost? Many people may choose these products not based on cost alone but because they sleep better at night knowing they have them.

In this case you are asking the adviser and his firm to take all the responsibility for a client's retirement, opening them up to a lot of potential legislation without the client being educated about financial markets and the potential gains/losses and/or benefits of their investment. Clients should be given a pamphlet or booklet (current prospectuses are gibberish to most people) which outlines potential conflicts of interest in different financial products and they should sign an attestation they have read and understand it and specifically how it relates to what they are investing in. The intent in my opinion should not be to eliminate options which appear to the outsider to be bad for the client because they are more expensive but also to make providers offer a product that is fair all around. Taken what I know of human nature and people's need for guarantees and security when it comes to their money these options should be available to them. In addition your legislation does nothing to change the behavior of the companies who offer these products, only the advisors. Why should companies not be obligated to offer "fair" products with a clear, common sense prospectus even the most unsophisticated investor can understand? Like the warnings on cigarettes there should be no doubt to the client what they are investing in.

The fiduciary standard is a good one and should be adhered to but it seems to me specific problems that work against the client should be identified and enforced rather than all the new rules you are proposing with their attendant costs and legislation. Put the money into enforcement, client education, better products with a clear prospectus and I believe you will see much better results for the client with those actions than with the new legislation you are proposing.

Thank you.