

PUBLIC SUBMISSION

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Definition of the Term Fiduciary; Conflict of Interest Rule - Retirement Investment Advice; Best Interest Contract Exemption; etc.

Comment On: EBSA-2010-0050-3491

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

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General Comment

My name is Jerry Broughton, and I have worked as a financial advisor for the investment firm Edward Jones for over 20 years. My strong concern about the Fiduciary Rule in its current form is how it may take away client choice in their IRA investing and increase costs to the client at the same time. Not too long ago, a client named Kristin rolled \$130,000 from a former employer plan into an IRA account with me. We invested her in "A share" mutual funds at an upfront charge of 3.50%. The mutual fund also charges a 12b-1 service fee of .25% per year on the assets. If her account never grew (unlikely) over 20 years time, the total of these charges would be \$11,050 over that time period. Under the current terms of the Fiduciary Rule, if they become applicable, my client would lose this investment choice. Let's say she rolled in another \$130,000 under the regulations of the Fiduciary Rule. Because our firm

currently does not feel that A share mutual funds can continue to be offered to clients in IRA accounts, if the Fiduciary Rule is in place, she could instead invest in a mutual funds account option that we have called Advisory Solutions. It charges nothing up front to invest in the funds, but 1.44% per year on the assets in the account. If this account never grew (unlikely) over 20 years time, the total of these charges on this second \$130,000 would be \$37,440, over three times as much! This scenario would possibly be repeated over millions of clients and billions and billions of dollars. The DOL needs to study this carefully. Perhaps by just briefly asking the major investment firms who serve individual investors: "what client choices do you believe you would no longer be able to offer in IRA accounts, if the Fiduciary Rule goes into effect as is?" and "what cost increases might there be to the clients if alternate investment arrangements were used to try to invest the money similarly, but still be Fiduciary Rule compliant?" Although many talk about how the Fiduciary Rule needs to go into effect so that clients no longer bear the costs of receiving conflicted advice, I would not be surprised at all if the total costs to individual investors, like I just gave an example of, would be far greater if the Fiduciary Rule is allowed to go into effect, as is. Unless the DOL does the necessary analysis to truly determine that the costs to investors of not having the Fiduciary Rule in effect, outweigh the costs investors would bear if the Fiduciary Rule actually is in effect, then I believe they should not allow it to go into effect until the rule is in a form that no longer would financially harm the Kristins of the world. Admittedly, I do not know if the fact that parts of this rule are scheduled to be delayed for longer than 60 days might solve this. Also, it is possible that by June 9, the mutual fund industry might have made changes so that our firm feels that Kristin's original choice could still be offered to her under the Fiduciary Rule. But this is something that the DOL needs to carefully consider, and I ask that the DOL not allow a rule to go into effect in a form that takes away client choice, and raises client costs to the point that the positive done by the rule for the investing public is outweighed by the negatives it causes them. Thank you for your efforts on this and other matters.