



Nestlerode & Loy.inc
investment advisors

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
US Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Attn. Fiduciary Rule Examination

Re: Definition of the Term “Fiduciary” and Related Prohibited Transaction Exemptions Proposed
Extension of Applicability Date (RIN 1210-AB79)

April 17, 2017

Ladies and Gentlemen:

Thank you for the opportunity to comment on the Definition of the Term “Fiduciary” and the Related Prohibited Transaction Exemptions. On February 3, the President issued a Memorandum requiring the Department of Labor to review this new rule and determine whether there may be further analysis needed. The Department has issued a 60 day extension allowing time to review the potential impacts.

We are a dually registered RIA/Broker Dealer which allows us to work with clients at all levels. As an RIA we have a fiduciary duty to our clients and strive to do the very best for them. As a Broker Dealer, we have the ability to assist clients who are just starting out, small businesses with employer sponsored retirement plans or non-profits who seek guidance on their investments. We put our clients’ needs ahead of our own. Having been independently owned and operated since 1937 we believe we are providing a valuable service to our clients as well as our community.

We support a fiduciary standard; however, we do believe that irreparable harm can be done by allowing this rule as written to become effective. We also believe the appropriate regulator to create such a rule is the SEC, not the DOL.

By imposing the fiduciary rule, we believe the American people will suffer by having fewer choices. Firms have already put limitations on account size by limiting access to a trusted financial advisor by routing customers to a call center. We have clients that have come to us because they have felt left out or deprived of speaking to someone who knows them, who understands their situation and who they feel is working for them. We provide a service greater than a robo-advisor could or a call center employee who doesn’t know them. This hurts the small investor and retiree that the DOL intends to help.

Every client deserves the choice to work with a Broker who works on a transaction based commission or with a Registered Investment Advisor who not only provides advice but also a multitude of additional services including complicated retirement projections.



Examples of people who benefit from working with a broker would include someone employed by a small business providing a Simple IRA option to their employees. These customers have the benefit of working with a Financial Advisor who will assist them in creating a well-rounded portfolio that will help to grow their retirement nest egg. Another is a customer who is contributing to an IRA or ROTH once per year as well as customers and additional family members who wish to put funds away in a child's 529 but may only do so at birthdays and holidays. Choice is what drives the American consumer. Everyone should have the choice to work with the type of advisor that works best for them. The cumbersome use of additional contractual language (the BIC) and the burden of the additional documentation and recordkeeping requirements will create confusion and disruption to the retirement investor as well as to the firm's surveillance teams. Without clear guidance from the DOL, firms are still reviewing and digesting this rule as only two of three expected FAQs were issued.

Significant time and resources have already been spent on reviewing holdings, compensation models, identifying material conflicts and making every attempt at complying with the onerous burdens this rule imposes. One such change came with the introduction of new share classes of mutual funds. This is a challenge as they have not yet become available and training of all advisors must be completed prior to the effective date of June 9, 2017. This is by far not the only additional training the staff must complete. Policies and Procedures must be modified as well. Delaying the effective date of this rule, at least 180 days or until it is thoroughly reviewed utilizing a new regulatory impact analysis and a new cost study once complete is the only responsible outcome of this Memorandum.

The SEC should be the conduit for issuing the Fiduciary rule. With the DOL providing litigation avenues to private investors, the legal profession is likely gearing up for the onslaught of class action suits. Without proper regulatory oversight, litigation will raise the cost of doing business to assume this risk. Again, this only serves to hurt the small investor and retiree that the DOL intends to help.

In closing, the DOL Fiduciary Rule is flawed as written and will do nothing more than constrict the American public from having a choice in how they receive retirement advice, how they will ultimately pay for this advice and how they will ultimately save for their retirement future.

I thank you for consideration of my comments.

Respectfully,

Jody M. Sharer, CCO
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