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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

To whom it may concern,
I am writing to express my support for a delay of the DOL Fiduciary act, and support for significant changes or total repeal.

I am a financial advisor and business owner with 31 employees in the Minneapolis area. We specialize in retirement income planning, tax planning, and asset management. All of our advisors are series 65 (fiduciary advisors), have life/health insurance licenses, and many have advanced designations (CFP, RICP, etc).

Our firm works with approximately 800 families, representing nearly $500M in assets.

We support the spirit of the law. We also believe that our firm is more prepared than most any firm to act as a fiduciary in all aspects of the business. However, we see serious flaws in the DOL Fiduciary Rule.

We believe that the fiduciary act--as currently written is well intentioned, but

detrimental to investors--and the small business owners who work hard to serve them.

There are several reasons the rule should be delayed:
1. Confusion, Chaos, and Redtape. We have spent tens of thousands on legal counsel trying to prepare--which pales in comparison to the billions already spent in the industry. We literally still don't know who signs the BICE in our relationship if our firm were to sell an annuity. Is it our RIA? What if the money comes directly from a 401k to an insurance carrier--which isn't a part of our advisory business? Is it the FMO (who the insurance contracts run through?)? They are willing to sign, but the RIA thinks they can't. Should it be the insurance carrier? They will sign for some, but not for all?

No one knows. On our advisory board is the former ceo of American Skandia, former president of Prudential Europe, and the head of compliance of a multi-billion dollar RIA. Some attorneys claim to know, but are contradicted by others, and the DOL helpline has given several contradictory answers.

You can't pass a law that the industry's best experts don't know the implications of. The confusion and chaos is exactly what the president is looking to eliminate.

2. Limited access to products to smaller investors: As currently written, our firm will not be serving new clients with less than $100K of investible assets. The increased risk of litigation is unfortunately not worth the revenue from smaller investors--and we think that is a tragedy.

3. Increased costs to investors: The math is simple here. When you add billions of lawyer fees across an industry, costs will go up--or certainly not down. Many businesses already operate with razor thin margin, and can not afford cuts--unless they lay people off. Here is the other tragedy in this law, we will be asking smaller clients to find a new advisor--as our margins have gotten tighter in preparation for the "new normal" we see post DOL.

Increased litigation will also run up costs--as we have seen in the medical industry. The idea that anyone can sue--even if the advice they are unhappy with was caused by market conditions and not through the advisor's malfeasance--is a scary proposition. An advisor needing to prove they acted in the client's best interest is counter to "innocent until proven guilty" This is "defend yourself in a court of law, and even if you acted in the client's best interest, you still pay exorbitant legal fees." This mechanism of enforcement will work to the interests of lawyers, and to the detriment of everyone else--in increased costs.

Thank you for considering my comments. We ask you to delay and then repeal the rule--then support a fiduciary standard being handed down from the SEC.

Sincerely,

Justin Arfsten