

# PUBLIC SUBMISSION

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Fiduciary - Conflict of Interest Exemptions

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## General Comment

Section VII- Exemption for Pre-Existing Transactions

The implied grandfathering element described in Section VII needs to apply to all covered accounts subject to the DOL proposal for all past and future purchase, sale, and holdings before the Applicability Date.

Section VII needs to clearly and fairly preserve existing business models and existing client relationships that were based on an existing regulatory framework that, in most cases with small accounts, are already heavily regulated by the Securities and Exchange Commission (SEC), Financial Industry Regulatory Authority (FINRA), and the States.

For existing accounts, the DOL proposals will ultimately cost existing accounts more to the majority of small investors it aims to protect. This is based on the need to wrap these accounts under a fiduciary platform to comply with the proposal and the increased fiduciary liability, whether the existing client wants it or not. If the proposed rule is not unconditionally grandfathered, the rule will also cause abandonment of smaller IRA accounts that were in existence before the Applicability Date, thereby ultimately harming the exact investor the DOL is seeking to protect.

Specifically, Section VII subsection (b)(3) that The Advisor and Financial Institution do not provide additional advice to the plan regarding the purchase, sale, or holding of the Asset after the Applicability Date needs to be removed due to the potential financial harm to the client following reasons, respectively:

"Purchase:

1) Many older IRAs, for example those held in variable annuities, have living benefits and/or death benefits that are no longer available for additional deposits. Several product lines have been discontinued but still require discussion of the holdings mentioned in this section. The existing IRA account would have to be charged separately in order to comply with proposals to re-certify and re-qualify the existing IRA which may no longer pay a commission on new deposits.

2) Last minute IRA deposits by existing accounts, delivered personally to an advisors office, might not be processed in a timely manner as a delay would be necessary to meet the proposed new rules before being able to accept such deposit. This could cause the depositor undue financial harm and advisor liability.

Sale:

Discussion of non-deposit matters including redemptions, reallocations, required minimum distributions, change of beneficiary, investment changes, authorized discussion with third parties (e.g. accountant, attorney, business manager) would trigger new rule compliance. This would necessitate compliance under the proposed rule causing a possible lengthy delay in re-certifying the account to meet the exact new rules this grandfathering proposal should be protecting.

Holding:

1) Any communication regarding holding (mailing of statements, prospectus, annual reports) to the existing IRA could immediately constitute a violation of the exact exception the section is meaning to make. The very nature and fallout of this proposal would be to ignore or abandon the existing IRA accounts in order to avoid being in violation of this proposal.

2) Reverse Churning element of fee-based accounts would be in violation of current SEC directives to put inactive (e.g. buy and hold) IRAs back into non-fee based accounts due to lack of activity. Since DOL directives could lead to a requirement to hold these accounts in some form of an asset-based fee account for advisor compensation, the directive would violate the exact violation the SEC is enforcing.

Current rules, best-practices, and industry standards already require continued compliance with Anti-Money Laundering Laws, Patriot Act, Privacy Policy, time-defined updating of account data, and electronic communications. This, along with possible increased fiduciary duty on established accounts, will increase the time, attention, and liability required to carry a smaller IRA account size, which will lead to abandonment of these existing smaller accounts.

Because of all the unique sets of circumstances as discussed in these comments that cannot be properly addressed from the past given the magnitude and complexity of the different products, vendors, and individual account histories, the need to grandfather existing IRA accounts in their entirety before the Applicability Date must be included in any final DOL proposal.

After being in this industry for over 28 years and understanding the small IRA market well as they are a majority of my client base, I can say it would be nearly impossible to go back and

retroactively meet new rules for not only my existing smaller IRA accounts, but the millions of IRA accounts out there that fall into this category.

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