As of: 7/21/15 8:12 AM
Received: July 20, 2015
Status: Pending_Post
Tracking No. 1jz-8k37-1icx
Comments Due: July 21, 2015
Submission Type: Web

PUBLIC SUBMISSION

Docket: EBSA-2014-0016
Fiduciary - Conflict of Interest Exemptions

Comment On: EBSA-2014-0016-0003
Best Interest Contract Exemptions

Document: EBSA-2014-0016-DRAFT-0039
Comment on FR Doc # 2015-08832

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General Comment

I strongly support the Departments proposal to strengthen fiduciary requirements on those who offer financial advice for retirement accounts. My views are grounded in my experience with my former financial advisor, who used my retirement as the occasion for arguments that I should turn over my balanced set of ultra low cost index funds to him for conversion into poorly-diversified high-fee actively managed accounts.

Four parts of the proposal are particularly valuable and important to preserve in the final rule:

(Sec. 2510.3-21(a)) Clarifying the definition of investment advice and discarding the five part test are essential. Under the current approach, advisors could be segueing in and out of the fiduciary role multiple times in a single conversation. A customer cannot be expected to follow when these transitions occur. Advice concerning a single transaction should not be subject to variable standards.

(Sec. 2510.3-21(a)((1)(i)) As discussed on pg 21939, the best interests standard needs to apply to sales pitches to rollover from an employee-based plan to an IRA, and other advice concerning retirement funds currently managed by other advisors. Advisors are not currently required to provide balanced advice concerning products. It should not be sufficient for an advisor to hide behind a defense that a new product is suitable, even if the customers current product is decisively superior. The advisor needs to make a good faith argument as to why the new product is in the overall best interests of the customer. That requires an understanding of the features of the customers existing retirement account. Ignorance cannot be an excuse for advocating a clearly inferior product.

As discussed in the fact sheet, advisor disclosures of potential conflicts of interest cannot substitute for adherence to a best interest standard. In my experience, customers are unlikely to read the boilerplate, are less likely to fully understand what we read, and highly unlikely to confront our advisors about troublesome provisions. The chance that advisors will alter their lawyer-sanctioned boilerplate to accommodate the misgivings of an individual customer are vanishingly small.

The provisions concerning policies and procedures to mitigate conflicts of interest are also critical. Employers cannot be allowed to create conflicts for financial advisors, forcing them to choose between the interests of their clients and their own income or survival at their firm.

The Department should move quickly to assure that this rule is finalized within the next 18 months. Forty years under the existing standard are enough.