



Kent A. Mason, Esq.  
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1455 Pennsylvania Avenue  
Suite 1200  
Washington, DC 20004

Dear Mr. Mason:

As you are aware, on October 22, 2010, the Department of Labor's Employee Benefits Security Administration (EBSA) issued a proposed rule that would amend a 1975 regulation defining when a person providing investment advice becomes a fiduciary under section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (ERISA). On September 19, 2011, EBSA announced its intention to re-propose the rule.

EBSA is now developing an expanded regulatory impact analysis (RIA) that will assess the impact of the re-proposal on both ERISA plans and Individual Retirement Accounts. The expanded RIA will take into account input from stakeholders and consultations with other federal agencies.

On April 12, 2011, you submitted to EBSA a study prepared by Oliver Wyman that assessed the impact of the proposed rule on IRA consumers. In order to help inform EBSA's expanded RIA, we request your voluntary assistance. In particular we ask that you provide the dataset(s) underlying the statistics and analysis presented (with identifying information removed as necessary). We also would like you to explain the following: (1) how the particular entities included in the dataset were selected; and (2) how their structures (for example, presence of affiliated product manufacturers), business models and practices, and product and service offerings compare with those of entities not included. We also would like you to provide answers to the questions presented in the attached document.

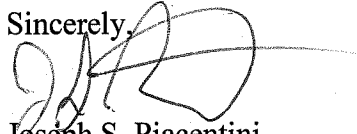
In order that we may use the information in drafting our re-proposal, a prompt response is needed. Please provide the information requested within 30 days of the date of this letter to:

The Office of Policy and Research  
Employee Benefits Security Administration  
Room N-5718  
U.S. Department of Labor  
200 Constitution Ave  
Washington, DC 20210  
Attention: Definition of Fiduciary – Data Request

If you prefer, you may email the information to me at [piacentini.joseph@dol.gov](mailto:piacentini.joseph@dol.gov).

We expect that any information you provide will be made part of the public record of this rulemaking. The Department appreciates your assistance in this matter. If you have any questions regarding this data request or need additional information, please contact me at (202) 693-8427.

Sincerely,



Joseph S. Piacentini  
Director  
Office of Policy and Research

cc: Phyllis C. Borzi  
Michael L. Davis  
Alan D. Lebowitz  
Representative Bill Huizenga  
Representative David Schweikert  
Representative Francisco "Quico" Canseco  
Representative Albio Sires  
Representative Blaine Luetkemeyer  
Representative Carolyn McCarthy  
Representative Cedric Richmond  
Representative Cynthia M. Lummis  
Representative Dave Camp  
Representative Dennis Cardoza  
Representative Denny Rehberg  
Representative Jim Renacci  
Representative Jo Ann Emerson  
Representative John Kline  
Representative Michael Grimm  
Representative Robert Dold  
Representative Robert Hurt  
Representative Ron Paul  
Representative Stephen Fincher  
Representative Steve Stivers  
Representative Todd Rokita  
Representative William "Lacy" Clay, Jr.

Representative Sean Duffy  
Representative Nan Hayworth  
Representative Jim Moran  
Representative Phil Roe  
Senator Orrin Hatch  
Senator Richard Shelby  
Senator Roy Blunt  
Senator Richard Burr  
Senator Johnny Isakson  
Senator Mike Enzi  
Senator Mary Landrieu

## **Follow-up questions on Oliver Wyman Report dated April 12, 2011**

Page 10-11. See figures 6 and 7. Is this really a distribution of account holders by asset level, or is it a distribution of accounts? That is, if a single account holder has multiple accounts (with one or multiple vendors) are those accounts aggregated or counted separately here? (Presumably some account holders have additional accounts with vendors not included in the sample?)

Page 12. See figure 9, last line, number of trades per account. Can you provide additional information characterizing the account holdings and activity? For example, are most accounts holding a few positions consisting of internally diversified funds representing different asset classes? How many are holding individual securities? Is the activity mostly in the nature of periodic rebalancing? With respect to number of trades and turnover, are most accounts near the average, or is the distribution more bi-modal, with some accounts trading heavily and others little if any? Can you provide data on the size of these trades?

Do you have data linking some or all of the following: account positions and trades, advice interactions (including whether a trade was solicited), adviser (broker) compensation arrangements, investor fees (including loads/commissions and expense ratios) and performance? If so, can you perform additional analysis on such data, or make such data available for analysis by others?

Page 21-22, figure 15. The comparison pertains to "direct costs." Can you provide similar information for indirect costs? Including those referenced in figure 15 footnote 1? Why were these excluded from the comparison? What is the basis for the conclusion that if these costs were considered "brokerage would continue to be less expensive"? Do the brokerage figures reported here include both full service and discount brokerage?

"Firms vary in whether they receive such [indirect] fees and how they account for them." Can you quantify that variation? What is the incidence and amount of these types of compensation, both by source (such as product manufacturer) and recipient (such as the broker)? What explains the variation? What is being compensated?

Various pages. Can you separate statistics for discount v. full service brokerage?

Page 23 figure 16, and elsewhere. Did Wyman attempt to determine whether net returns differ depending on distribution channel and/or broker conflicts? Did Wyman review academic literature or other evidence on this question?