

# PUBLIC SUBMISSION

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**Docket:** EBSA-2023-0014  
Definition of an Investment Advice Fiduciary

**Comment On:** EBSA-2023-0014-0001  
Retirement Security Rule: Definition of an Investment Advice Fiduciary

**Document:** 1210-AC02 comment 00074 Spivey 12152023

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## Submitter Information

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## General Comment

Jerry Spivey  
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The Honorable Lisa M. Gomez  
Assistant Secretary of Labor  
Employee Benefits Security Administration  
U. S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Re: RIN 1210-AC02

Assistant Secretary Gomez:

I am a Registered Investment Advisor and hold myself out to the public as a fiduciary and adhere to all the necessary regulations that entails. Yes I am still dismayed at the suggested actions by the DOL to open the "fiduciary" umbrella for retirement plans. Highly qualified financial advisors can provide advice to their clients on 401k, Simple IRA, IRA, and other retirement plans without necessarily becoming fiduciaries. The unforeseen consequence (something about which we must always be aware) is these

small-town advisors will be out of the marketplace for helping their clients plan their retirement. Moreover, by drastically changing recently settled fee structures, average Americans won't be able to afford sound advice.

As a member of Finseca, I believe deeply in the mission of financial security for all.

The Proposal Suggests My Colleagues' Work is “Junk”

The service they provide to their clients and families is valued as indispensable for their families and businesses. Consumer choice of transparent fees for accessing that advice is NOT a “junk fee.” One size does not fit all. Commission models better serve some retirement savers, while fee-based cost models better serve others. Consumer should have access to both models to choose what best serves their individual needs.

The playing field has changed since the DOL’s last attempt in 2016. The SEC, FINRA and nearly all state insurance regulators have adopted new guidance and regulations that improve consumer protections, including adopting best interest standards, and enhanced disclosures. The SEC's Regulation Best Interest has been in effect since 2019, and the NAIC Model Act for Annuities has been adopted by 40 states. What evidence do you have of a widespread problem, inefficiency, or gap in the current regulatory structure?

The financial security profession currently maintains stringent qualification and licensing requirements. However, the Proposal’s additional and excessively burdensome procedures, aimed at addressing a few “bad actors,” will significantly impede existing professionals to continue their careers and discourage new entrants, which is troubling as we currently need more financial advisors, not fewer. In fact, the profession has been flat – despite the \$12 trillion dollar gap between what people have and what they should in protection.

I urge you and the Department to withdraw the proposed final regulation and proposed amendments to protect the interests of America's workers, families, and retirees.

Thank you for your consideration.

Jerry Spivey