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Definition of an Investment Advice Fiduciary

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Retirement Security Rule: Definition of an Investment Advice Fiduciary

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Submitter Information

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General Comment

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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 writing to express my serious concerns with the Department of Labor's proposed Retirement Security Rule: Definition of an Investment Advice Fiduciary and Associated Prohibited Transaction Exemption Amendments. I strongly urge the Department to withdraw this fundamentally flawed Proposal.

I have been a Certified Financial Planner (CFP) for nearly 35 years, and as such, have been required to act as a fiduciary at all times with my clients. I am licensed to offer my clients both fee-only accounts and commission-based accounts. There are situations were both types of accounts are in the client's best interest.

During my professional career, I have served several hundred individuals, families, and small businesses. The primary focus of my practice is working with public school teachers, in helping them save for retirement using 403(b) accounts. While every school district has several choices for educators to select from for their 403(b), my clients chose to work with me because they wanted a financial professional with whom they could meet and discuss their personal financial lives. What I have found throughout my career is that every person is unique, with different goals. objectives and needs. My professional fiduciary duty, then, becomes to match those unique goals, objectives and needs with a financial product that serves in their best interest. Many of my clients started with me as new, young teachers earning relatively modest incomes, and started their 403(b) accounts with as little as $25 per pay (no fee-only account will allow that low minimum). A mutual fund was often the best choice for these accounts, and the sales charge was fully transparent, disclosed both verbally and in writing in the prospectus. I have many clients who have continued to contribute to these accounts for 30+ years, and now have several hundred thousand dollars in them. The total commissions paid by my clients through the years on these accounts is a small fraction of what they would have paid cumulatively in a fee-only account.

I am nearing the end of my career, so the Proposal, if enacted, would not affect me personally. However, I am writing because I strongly believe this Proposal will harm the chances of future teachers to seek the advice of a financial professional.

The Proposal Limits Access to Advice

Imposing a fiduciary-only, fee-only model for advice would exclude retirement savers, especially those with low- and middle-income, who lack the required account minimum, denying them essential retirement advice. The proposal will lead to increased costs for financial advice, coupled with a reduction in product choices and a decrease in the number of available advisors.

The Proposal Suggests My Work is “Junk”

The service I provide to my clients and their 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 Proposal Seeks to Ignore New Protections in Place Developed by Federal and State Regulators
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 Proposal Makes it Harder to become a Financial Security Professional
The regulatory burden is already a substantial weight on my practice, my clients, and my ability to serve more people. I shudder to think of the impact the Proposal will have on someone new to the profession and just starting out. I also believe your rule will limit opportunities for mentorship and apprenticeship of new advisors by more senior ones.

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.

Randy Eschels, CLU, ChFC, CFP