PUBLIC SUBMISSION

Received: November 28, 2023
Tracking No. lpi-q7hr-05he
Comments Due: November 29, 2023
Submission Type: Web

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

Comment On: EBSA-2023-0014-0003
Hearings, Meetings, Proceedings etc.: Retirement Security Rule; Definition of an Investment Advice Fiduciary and Associated Prohibited Transaction Exemption Amendments

Document: 1210-AC02 request 0023 National Pension Partners Paleveda 11282023

Submitter Information

Name: NICHOLAS PALEVEDA

General Comment

I WOULD LIKE TO SPEAK ON THE FIDUCIARY RULE See attached file(s)

Attachments

1210-AC02 request 0023 National Pension Partners Paleveda 11282023

Address: DURHAM, NC, 27705
Email: chesspaleveda@gmail.com
Phone: 3603050925

Nicholas Paleveda MBA J.D. LL.M
Chief Executive Officer
National Pension Partners
Administration Office
1225 E. Ft. Union Blvd
Suite # 350
Cottonwood Heights, UT 84047
Tel: 877-252-1692
Fax: 801-676-1505
Website www.nationalpensions.com

NOVEMBER 30TH 2023

TO: THE COMMITTEE
FROM NICK PALEVEDA MBA J.D. LL.M
RE: THE FIDUCIARY RULE

Dear Sir or Madam,

My name is Nicholas Paleveda, a USCF chess master and 3X Florida State Chess champion. I have an MBA from The University of South Florida, a J.D. in Law from the University of Miami, an LL.M in Tax Law from the university of Denver and for 12 years, the former Adjunct Professor of the Graduate Tax Program at Northeastern University where I was lead faculty for the Retirement Planning course. I have been an active member of the Florida Bar for 39 years and licensed before the U.S. Tax Court, the 11th Circuit Court of Appeals, the 9th Circuit Court of Appeals and The Supreme Court of the United States. In the last 22 years I have been CEO of a TPA firm that manages Qualified Plans for small companies. I am here to clear up the misconceptions concerning the Retirement Industry and the Fiduciary Rule.

1. Fixed and Equity Index annuity contracts. These contracts have no fees or commissions taken out of the fund`s the client transfers into the contract. Basically, they are like CDs except issued from an Insurance company. When I wrote an article in 2009 for the Journal of Accountancy, the peer reviewers could not believe that these transactions did not have fees or commissions taken out. The do have surrender charges that decline over years (like a CD). The consumer may withdraw up to 10% each year without a charge. Fee only planners tend to mislead consumers that huge fees and commissions are taken out.
2. The S+P 500 beats all investments over a long period of time. This is simply-not true. If you invested one million dollars into the S+P 500 in the year 2000 and retired 10 years later-you would have about $750,000. During that same 10 year period, off you invested one million dollars in a fixed annuity, you would have about $1,400,000. The difference is about $650,000 in favor of the annuity. Fee only planners would not be able to sell the annuity as they are paid a commission by the insurance company and under the rule will have *ab-inito “breached their fiduciary duty”.*

3. Investment options not mentioned by fee only advisors. There are many investment options that are not mentioned by "fee only" advisors because no fees are generated-such as tax certificates, annuity contracts, self-directed real estate and annuities.

Finally, the biggest threat to retirement security is NOT whether a producer earns .05% more on a product sale which may have an impact 30 years from now-but the 34 Trillion dollar national Debt and its growth over the next 30 years. This committee is a net contributor to this debt and has the means to ask for a budget reduction-not a budget increase. The 34 Trillion has the potential to create an Argentina economy rendering the time wasted on an unfit fiduciary rule-a waste of time.

Conclusion- The Fiduciary rule as proposed is un-workable-it misleads the general public and is self-serving to a select group of 'fee only" planners. Our empirical evidence showed that individuals and corporations set up of new plans reduced by 40% when advisors were confronted by this rule. In practice-it hurts the consumer as less small companies and individuals set up plans for retirement. If the objective is to have only large companies and the U.S. government have retirement plans-I would vote for this rule. But if you support small companies and small business owners-I would vote against this rule.

Hope this is helpful.

Nick Paleveda MBA J.D. LL.M
CEO National Pension Partners

*Major companies such as New York Life, Transamerica and Ohio national left the small retirement planning market as they could not comply with the fiduciary rule as many of their agents are "captive". Most investment advisors will not be able to comply as they do not have selling agreements with certain products. The "fee only" advisor will be subject to litigation as the S+P 500 (which according to studies beat over 90% of money managers) cannot offer annuities. Who wins? Countless law firms that will litigate this rule over the next 10 years. Who loses-the countless small businesses and their employees which will not have retirement plans.