

PUBLIC SUBMISSION

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Proposed Amendment to Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, and 86-128

Comment On: EBSA-2023-0017-0001

Proposed Amendment to Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, and 86-128

Document: 1210-ZA34 comment 00036 Sanctuary Wealth Management, LLC
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Submitter Information

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General Comment

The following are some negative implications this rule has. - The rule may have a negative impact and influence the types of investment products and services offered by financial institutions, potentially leading to a more limited choice of options for investors.

- IARs who are already fiduciaries will have to make additional disclosures, which can hurt investment advisers working with small accounts.

- Small business plan sponsors and financial advisors who provide 401(k) plan advice to businesses will be negatively affected, as the new rule would now subject them to ERISA guidelines. This could prohibitively increase the cost of offering group retirement plans like 401(k)s to employees, so that small companies may be unable to offer them.

- The rule could limit access to financial advice, particularly for smaller investors, as some advisors may choose to avoid the potential liabilities associated with acting as fiduciaries. With its broadened definition of “investment advice” one-time interactions or recommendations that were historically considered outside the scope of fiduciary duty. The new rule could leave brokers, agents, salespeople, and even junior employees who provide education into legal fiduciaries bearing the same risks as

financial advisers.

- The rule imposes significant compliance costs on financial institutions and advisors, which could ultimately be passed on to clients or limit access to certain services.
- The rule is overly complex and ambiguous, making it difficult for financial professionals to understand and comply with its requirements.
- The rule is inconsistent with the other existing federal regulations, as the SEC's Reg BI already provides investor protection. There is uncertainty in the regulatory environment, causing concern about the stability and longevity of another DOL retirement rule.
- The absence of a safe harbor for sales recommendations or sophisticated investors leaves room for ambiguity in certain marketing activities. This lack of clarity may affect common interactions with both retail and sophisticated investors.
- The threshold for fiduciary status is making a "recommendation," but the proposed rule lacks a formal definition. The determination relies on an objective analysis of facts and circumstances, potentially introducing subjectivity into the assessment.
- The rule's provision requiring disclosure of information when rolling assets from a 401(k) plan into something else, is requiring disclosure of information that will be very hard to obtain (finding fee information in some cases may require digging through public plan filings and in some cases the plan may be too small to have public filings).