PUBLIC SUBMISSION

As of: 4/27/15 11:30 AM
Received: April 24, 2015
Status: Pending_Post
Tracking No. 1jz-8iha-slm5
Comments Due: July 06, 2015
Submission Type: Web

Docket: EBSA-2010-0050
Definition of the Term ‘‘Fiduciary’’; Conflict of Interest Rule—Retirement Investment Advice; Notice of proposed rulemaking and withdrawal of previous proposed rule.

Comment On: EBSA-2010-0050-0204
Definition of the Term Fiduciary; Conflict of Interest Rule-Retirement Investment Advice

Document: EBSA-2010-0050-DRAFT-0242
Comment on FR Doc # 2015-08831

Submitter Information

Name: Anonymous Anonymous

General Comment

Page 21967 of the Federal Register notes that "the Department seeks comment on whether additional exemptions are needed in light of the Proposed Regulation." I respect what efforts there may have been to ensure that low- and middle- income people still retain access to not just retirement savings advice but also products. However, this best interest contract exemption fails to do that, so I suggest you try creating one that does preserve access.

Small investors, unfortunately, often need someone sitting down with them explaining why they need to start saving in order to actually start saving for retirement. Placing ERISA liability, contractual liability, and the potential for an 15% excise tax on brokers who want to help small investors makes no sense. Placing such liability on brokers (before even mentioning additional contractual harm penalties) for each account is by definition a cost that affects the economics of each account. Such drastic measures, and the fact that brokers are paid in relation to the size of the account their helping, only mean that every single broker will now have to raise account-minimums (aka cut off access).

I would argue that given the rigors of FINRA Notice 13-45, that any action on the part of the Department is only warranted if an actual cost-benefit analysis says it is. The joke accompanying this proposal is absurd, but I'll admit that a real cost benefit analysis may show action is necessary. The logic for why in that case the SEC should be the one to act and not the Department could fill multiple books (For example, nothing in the rule prevents bad actors from simply acting worse and putting people not into IRAs but normal, non-tax-advantaged accounts). That all being said, I recognize it is unrealistic for the Department to stop now

without losing.

If the DOL is to act, then to minimize (but not eliminate) the harm it will cause low- and moderate- income families it must come out with an actual principles based exemption devoid of any contractual requirement. After expanding the definition of advice, it should create an exemption that stipulates that if a broker-dealer meets the already well defined best interest conduct standard imposed currently by the SEC on Registered Investment Advisers, then the broker can receive otherwise prohibited compensation.

Below is a summary of the different standards for which products as they are now and how they would be under different proposals.

Right now there are four standards
1.) ERISA best interest for defined benefit pension plans
2.) SEC best interest for certain types of 401k's, IRA, and non-IRA's
3.) FINRA almost best interest for certain types of IRA's (thanks to the recent FINRA notice 13-45 and IRS case law)
4.) FINRA suitability for certain types of non-IRA's

Under what the DOL has proposed we'll have
1.) ERISA best interest for defined benefit pension plans
2.) ERISA best interest with additional contractual, undefined best interest on top for all small 401k's and IRA's
3.) SEC best interest for certain types of large 401k's and non-IRA's
4.) FINRA almost best interest for certain types of IRA's
5.) FINRA suitability for certain types of non-IRA's

Under my proposed suggested changes to the DOL proposal, we'd have
1.) ERISA best interest for defined benefit pension plans
2.) SEC best interest for 401k's, IRA's, and certain types of non-IRA's
3.) FINRA suitability for certain types of non-IRA's

If the SEC were to act
1.) ERISA best interest for defined benefit pension plans
2.) SEC best interest for 401k's, IRA's, and non-IRA's