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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-2010-0050-0205

Definition of Fiduciary; Conflict of Interest Rule-Retirement Investment Advice and Related Proposed Prohibited Transaction Exemptions; Hearing and Comment Period Extension

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General Comment

I am a small business owner who is very concerned about the U.S. Department of Labors Conflict of Interest rule as currently drafted.

Through SEP and SIMPLE IRAs, I and my employees have accumulated significant retirement savings. The proposed rule threatens the continued success of these plans and the ability of small businesses, like mine, to provide retirement security.

The DOL proposal will make it harder to provide retirement plans to small businesses. The broadened definition of investment advice includes sales communications, some educational materials and other situations where no intention to provide individualized fiduciary advice has been expected. However, my understanding is that the proposal carves out large plan advisors from this definition. If a plan has 100 or more participants, or \$100 million or more in plan

assets, the advisor to that large plan does not have to be a fiduciary! Because an advisor to a small plan is not carved out of the rule, the advisor who is trying to market retirement saving options to a small plan is considered to be providing investment advice and must comply with the rule which is likely to increase costs that will be passed on to the consumer. Advisors to large plans are not burdened with these additional hurdles. And some advisors to small plans may stop servicing them if they determine that the expense and risk is not justified.

Because advisors to small businesses are not carved out of the investment advice definition, they must either change their fee arrangements or qualify for a special rule called an exemption in order to provide services on the same terms as before. The new exemption does apply to individual owners of IRAs, but it is not clear whether this exemption is available for employer-offered SEP and SIMPLE IRAs. Even if the Best Interest Contract Exemption does apply, it would itself substantially increase costs for advisors due to its many conditions and requirements and, again, those costs are likely to be passed onto the consumers.

Under the proposed rule, small business SEP and SIMPLE IRA arrangements will become more expensive to serve, meaning that many small businesses will ultimately lose access to their advisors. I fear the DOL's proposed regulations will harm the very small businesses and workers they are intended to protect and urge the DOL to address these concerns.