

June 23, 2015

Office of Regulations and Interpretations
Employee Benefits Security Administration
US Department of Labor ATTN: Conflict of Interest Proposal
200 Constitution Avenue, NW Room N-5655
Washington, DC 20210

I am writing to express why I AM AGAINST the Conflict of Interest Proposal. Please take the time to understand why a professional in this field, who has “boots on the ground” experience helping retirees, feels that this proposal is disingenuous and should not be adopted. Please do not even suggest I have a conflict of interest in writing this letter. This letter is based on experience of nearly thirty years in the industry. I know for a fact that some of what is written by the Department of Labor was based on willfully false and /or misleading information provided by sources that have their own agenda and their own conflict of interest. If asked to testify I will do so with the proof to provide the evidence and proof that the information provided you to write your report was intentionally false and/or misleading.

The purpose of this correspondence is to communicate my evaluation of the Department of Labor study on “conflicts of interest” and the fiduciary role of advisors working with IRA accounts.

I am a disabled veteran. I served my country as an Army Officer and received an honorable discharge as a captain in military intelligence. I was trained to evaluate information and introduce a conclusion that would suggest a most likely outcome of the intelligence material I reviewed.

I have read a great deal of information on your studying and report on the conflicts of interest. I applaud the effort to create the fiduciary standard for stock brokers (registered representatives) as I have been under that standard as a registered investment advisor for quite some time.

However, someone is clearly missing the target when you ask financial advisors to warranty their work, which is mandated in this proposal. No US government agency that I am aware of warranties or guarantees their work. If they did I am confident that many would leave the federal government if they could be held personally liable for making humble but honest mistakes. Doctors, lawyers, accountants, and other professionals do not warranty their work and the federal government has never taken the step to order those professionals to warranty or guarantee their work. It strikes me as unconstitutional. If we asked the government to live by the same standard; I am sure most if not all would have to resign today for their failures. You are setting a standard with this warranty contract that is impossible to meet. Every client will have the right to sue a good adviser who did a great job, treated the client fairly simply because they may have forgot to have a block checked on the new account form. That is a violation of the rules and regulations of the industry but hardly a violation that should entitle someone to sue for a decline in their portfolio if the stock market goes down. The President is a lawyer. He has a conflict of interest

by helping lawyers sue advisers over this rule. That is how silly this suggestion is by Mr. Obama and the Department of Labor.

The Securities and Exchange Commission and FINRA failed miserably to catch Bernie Madoff. The White House and State Department failed miserably to protect our ambassador in Benghazi. The White House failed to keep its promise on Obamacare when it said that we could keep our doctors and existing insurance plans. The White House said our health care costs would not rise with Obamacare yet they did. Should he be allowed to be sued for that mistake? The true fact is that many people have experienced tremendous increases in their health insurance plans and many people have lost their doctors. Despite the best intentions of the White House, the White House could be sued if they were held to the same standard that you are asking of financial advisers. The NSA failed to protect our national security with Edward Snowden. The Department of Defense has been hacked and secrets of the employees are forever compromised. The list goes on since the beginning of this nation.

Your new regulation will result in many unintended consequences. Many American voters will lose their financial advisers, most of whom they very much appreciate. Financial advisers will let clients go because they do not want the liability associated with a warranty or guarantee of their work. There are thousands of regulations between the Federal Government, the numerous regulatory bodies and the fifty states (each with their own regulations and advisers tend to have clients around the country). No one in any industry is required to sign a contract that warrants they are not in violation of some regulation. That is an impossible standard and the Securities and Exchange Commission, FINRA, and every state regulator knows that. (So does every litigation attorney.) That is why they audit. Regulators tell you “we will always find something, but we are here to help honest people make corrections and punish bad people.”

So now the Federal Government (White House and Department of Labor) want to make a rule that no other person in America is forced to obey. The Government is giving an order to advisers like a dictator passes decrees. The consequence is that many advisers will fire many of the lower end clients to protect themselves from baseless lawsuits. Since you work for the government, you have no idea how easy it is to be sued and you just served the entire legal industry the best gift in my lifetime. Talk about a conflict of interest!!!!

Those in the financial lower middle class who do not have the education to make their own investment decisions will now be forced to do so. With a higher probability, the lower middle class will be subject to lose 10, 20, 30, 40, 50 percent or more of their money because they will no have help with investing. That mistake/blunder will be on the Federal Government.

The market has done a fairly good job of determining what a good financial advisor is because bad financial advisers typically are discovered and run out of the business. Bad advisers are a very small percentage of the investment advisor population. The real bad guys are the big investment bankers and banks who caused the financial crisis in 2008. Yet the Federal Government does not pursue criminal charges against them.

Another consequence of your mandatory regulation will be the opening up of Pandora's box for litigation against all financial advisers. As such, you will force many advisers to close their

doors for fear of litigation even if they are good honest people. There will be a wave of unemployment created by your regulation as advisors close down their offices and fire their staff. Again, that will be your fault and I will do my best to make sure the public is aware of that point.

After reading a great deal of commentary and a great deal of your report I have concluded that your report on the state of the industry is fraught with misguided statements, untruthful statements, and factual inaccuracies blended with truthful statements and factual accuracies. The problem does not lie with the truthful statements and factual accuracies. The problem lies with what appears to be a one sided, biased report full of untruthful statements and inaccuracies. The purpose of the White House report is to achieve the agenda of the White House. It clearly demonstrates either a lack of knowledge of the private sector in the financial planning services arena or a complete bigoted agenda. What master is the White House trying to please? AARP?

I have a copy of the February 2015 report entitled the effects of conflicted investment advice on savings from the Executive Office of the President. I also have from the Department of Labor a report dated April 20th 2015 part 3 Federal Register. I will highlight a few of the misleading, inaccurate, or questionable descriptions in the White House report first.

So we start on the same page, let us clearly identify American taxpayers who have IRA accounts that invest typically in stock market mutual funds and bond market mutual funds: those IRA account holders are investors. Investors by definition can either make or lose money when they invest. The White House report calls them IRA savers, which I find to be very deceptive because we think of savers as using savings accounts which typically have no risk provided they are insured deposits by the FDIC at a banking institution. That is much different than an investment IRA account and we both know you are addressing brokerage investment IRA accounts and not savings accounts. So let us be honest and call them IRA investors.

The fact is nearly all people in almost every profession have some sort of a potential conflict of interest. The issue is: do they let it become the reason for giving or not giving advice? Fee based advisors are paid a percentage of the assets under management regardless of what investments they put their clients into. This helps to eliminate the potential for conflict of interest based on a commissionable product. Stockbrokers or registered representatives who work on a commission are more susceptible to conflicts especially if they are paid more for selling proprietary products. Fix that problem. So I support elevating registered representatives to a fiduciary standard.

On page 2 of the White House executive summary it says "such fee structures generate acute conflicts of interest: the best recommendation for the "saver" may not be the best recommendation for the advisors bottom line." Anyone with an ounce of integrity would realize how disingenuous that statement is. Fee based advisors do not have genuine acute conflicts of interest if their pay is based on a percentage of the assets under management. Commissionable advisors may have a conflict of interest but to use the word acute as the White House did suggests imminent danger which is drama for drama's sake. The potential for the conflict may exist but in most cases of the advisors I know, they sell the product that is in the client's best interest. Those advisors avoid selling the product that is in the advisor's interest. We can all acknowledge a certain percentage do not follow that method of doing business. But that is true

in any business, including the legal profession where we know lawyers run up bills or bill falsely or double, triple or quadruple bill for the same time to different clients.

Those who work on a commission may have an incentive to sell a 5% commercial product versus a 2% commercial product or may have an incentive to sell a fixed annuity with an 8% commission instead of a 3% commission. We both agree there is the potential for a conflict of interest. If the advisor chooses the product based on what they think is in the best interest of the client whether the commission is 2%, 3%, 4%, or 5%, then there is no conflict of interest. I would like someone in the Department of Labor to warranty that they know what are the best mutual funds to invest in for the next 1 2 3 4 & 5 years. Better yet, the President of the United States has inside information and should be able to predict what will be the best market performers regardless of commission.

On page 5 of the White House report in the second paragraph there was a genuine misstatement of fact. I have yet to see an employer 401 k plan that allows workers to have access to various forms of advice with a large menu of options and nearly an unrestricted choice of investments products. In fact, most plans do not offer advice. Typically, there is no one at the human resource department of the company who will sit down individually with an employee to help evaluate their individual situation and give investment advice. It just does not happen—while employed or as they retire. They do not want the liability and it would cost the company a great deal to staff that type of service. The report sites Vanguard as providing lots of investment choices. It does not matter how many investment choices Vanguard offers in their fund family. What matters is how many of those investment choices are made available to the employee in the 401 K plan and what assistance is provided to the employee in making the appropriate choices. I assure you many employees do not have an unrestricted choice of investment products. And Vanguard has many punitive restrictions on investors in their 401k plans. Those punitive restrictions do not apply in IRA accounts. Ask me and I will prove it. These severe limitations restrict 401k investors from being able to properly diversify through various types of markets thereby increasing their risk and increasing their risk of loss thanks to the United States Government if this proposal goes through. And yes, I will do my best to have the voting American public become aware of who is responsible for their losses.

I work with two Fortune 500 companies. One uses Vanguard; the other uses Fidelity. Both the Fidelity and the Vanguard families have a wide choice of funds. But the 401 k plans that both Fortune 500 companies use only provide a limited number of Vanguard funds to the employees of one company and a limited selection of funds in the Fidelity funds for the employees of the second Fortune 500 company. I know this for a fact and will give sworn testimony if necessary. I will back this testimony with the plans themselves. The plans severely restrict the choices of investment products. For these reasons, the lack of diversification becomes an issue which can cost employees money as they cannot reduce risk to more acceptable levels on an efficient basis. The Modern Portfolio Theory won a Nobel Prize in economics based on the principles of an efficient frontier for investors to invest with a broad diversification of funds. I have yet to see the 401k Plan that would provide this efficiency.

I would like for a report to be issued by the White House and the Department of Labor that identifies the Fortune 1000 401 k plans and, identifies the investment choices allowed in the

401-k plan by the respective company indicated in their study. The truth is such research will reveal the White House statement is false and misleading. I will grant you that several of those companies in the Fortune 1000 may offer a great deal of choices but I have yet to see the plan that the White House claims offers a nearly unrestricted choice of investment products. If there is such a plan, it is rare. And much of the advice I see is in the form of a computer model which has no understanding of the individual's personal risk tolerance. It simply gives a model to invest in based on age. This is hardly a great way to provide investment advice, especially if the market is trading at an all-time high. Would you put a lot of your money in the market when it is trading at an all-time high? Well, a computer model may tell you to do just that based on your age. Is that prospect not just dandy?

If we move to page 6 of the White House report third paragraph we will see a definition of a conflicted payment. The White House deems a conflicted payment as payments to the advisor that depend on the actions taken by the advisee. I have no idea why such a false statement would be written except to push an agenda. A conflict of interest comes into play when a registered representative or broker actively chooses a higher commission product that is not suitable to the client over a lower commission product that is suitable for the client. Despite the White House report, suitability is still an issue.

Page 7 of the White House report says a majority of the households report satisfaction with their advisors and at the same time express confusion and make mistakes about the different titles, legal obligations and consumer protection that exist in the advice industry citing the Consumer Financial Protection Bureau 2013 and the Government Accountability Office Gao 2011 and the Investment Company Institute 1997, and the SEC 2011.

This argument is a straw man argument. This argument is disingenuous for the following reasons: first when I had major surgery at the Mayo Clinic in Rochester, Minnesota I did not understand everything the doctor told me. I was confused and did not understand all the details of the surgery or all of the details of my injury. I had to deal with many doctors that worked with the surgeon and the anesthesiologist. Quite frankly I was not sure what their responsibilities were or their legal obligations. Why am I not surprised? I can take any profession and do the same evaluation. Unless the general public receives an education in the school system, grade school, middle school, and high school on this topic, it will be very difficult for them to understand the legalities of the financial services professional. As far as an individual investor understanding legal obligations, I must ask you, "Can anyone tell me what the legal obligations are of every attorney and every practice from estate planning to tax planning to real estate law, to defense litigation to environmental law?" And what is the difference between a paralegal vs a JD vs an LLM vs an attorney-at-law in terms of responsibilities and liabilities? I think I would be confused and make mistakes about their different titles because they all practice different parts of a law and why would anyone think that I would have any understanding of their legal obligations and variances depending upon their practice unless I was given legal training. Oh yes, and do those obligations and responsibilities vary among all fifty states? At least in some way?

Does anyone at the Department of Labor really believe that the average person who has a 401k plan currently understands the legal obligations of their Vanguard or Fidelity

custodians or of their employers? Your suggestions seem to imply they do. We both know that is false.

At least with a financial advisor they can get individualized help and that help can be customized as opposed to a cookie-cutter plan carved out in a 401k. They have a better chance to understand the obligations from a one on one talk with an adviser than no conversation with 401k's.

Does anyone in the Department of Labor think that the average person who has a 401k plan can tell you the difference between a second lieutenant and a first lieutenant, between a major and a lieutenant colonel, between an officer that wears an oak leaf vs an officer that wears a silver leaf, between an officer that wears a gold bar vs an officer that wears a silver bar? (Since we are all protected by the military and Americans get almost a daily dose of the military on their television you might think they should know all of the rank and title differences.) I would ask the Department of Labor to explain to me why American citizens are confused about titles in light of this information. Americans have no idea what the legal obligations are of the military. American citizens certainly cannot explain Posse Comitatus.

On page 8 there is another disingenuous argument that the White House paper makes. It says most notably that advice to roll money out of the plan into an IRA is generally subject to much lower standards of care than advice when received in the plan, moreover investment fees in a typical IRA may exceed investment fees in a typical 401k according to a series of recent GAO reports. Oh my, what a patently false statement. FINRA, SEC and State regulators personally examine and audit IRA accounts. Who examines and audits 401k accounts? Department of Labor? Please help educate me how you do your audits of the Fortune 1000 401k's and let's see if your standard of care is as high as the SEC, FINRA and State regulators. The advisers report to this governing regulatory authorities and understand if they fail to meet high standards of care in their advice they could be subject to severe penalties. Please help me understand how the Department of Labor enforces audits on the 401k's to make sure they meet the "higher" standards of care and advice the White House said without offering proof. And, heaven forbid that advisors be paid anything for giving help on an IRA account. And why should we pay Department of Labor employees anything? After all they are servants of the Government. It is a conflict of interest to the taxpayer to have to pay salaries to the Department of Labor when they should be doing things out of the kindness of their heart and because they serve the people.

Most of the increase in cost in IRA accounts is the result of the fact that the 401k investor made the decision that they wanted to hire someone to help them navigate the complex and volatile markets. Those investors recognize that they are investors and not savers. They understand they don't need to hire someone to help them save. They also know they can choose not to hire an adviser. Let them decide and stop taking the decision away from them by having advisers drop them as clients because of the unjust regulations you are about to put into place. If they want to be a saver....let them buy the one year or two year Treasury or a 5 year Treasury or FDIC insured CD.

On page 10 the White House report suggests evidence of under-performance as due to conflicted advice. Based on previous pages within this report one would conclude that the White House believes conflicted advice is any advice provided by a financial advisor for which they are

compensated, and that is disingenuous and not true. It is a statistical fact that lower fees will result in a higher return if all of the other investment variables are equal. Using that analysis Standard and Poor's 500 index fund with no fees will outperform the Vanguard Standard and Poors Index 500 fund which charges low fees. If the argument is about fees then you are missing the point. Ask yourself this very important question. Would you have put a great amount of your money in the Vanguard Index 500 fund in October of 2007? Based on what you know today of course you would say no. But people who did not have financial advisors did exactly that when it came to real estate and the stock market. Individual investors cashed out their 401k plans and invested it all in the real estate market of 2005, 2006, 2007 only to be wiped out. I warned my clients not to do that. But some people who had no financial advisor did exactly that precisely because they had no financial advisor to stop them. They had no one to put the brakes on them. Most financial advisors I know diversify their client's assets among families of mutual funds because no one fund family including Vanguard can have or make the claim that they have the best in class in every investment sector. And yet the White House suggests otherwise. That is false. So who is behind the push for this effort? Vanguard? AARP? Fidelity? Vanguard and Fidelity are losing assets in 401k plans when retirees roll over their assets into IRAs because their plans are narrow, limited and in some cases punitive. This makes them non-competitive. That is why people roll them out. You want proof? Ask me to come testify with my evidence and proof.

I have invested money in the Vanguard funds and call them to ask if I could speak with a member of the investment team of a particular mutual fund. I tried several times and for several different funds within the Vanguard family and their answer was a consistent no. However, if I invest with Franklin Templeton, and I call them and ask for the some help they will immediately set up a phone call for me with someone on the investment team. That is exceptionally important for me to be able to have access to managers so that I can understand what direction they think about the general markets. They will make general statements such as we think Europe might be good because they are going through a stimulus program today. That gives me insight that I cannot get from Vanguard and it is certainly worth the extra difference in fees that I personally must pay on my Franklin Templeton accounts. It also benefits my clients and this is a benefit I cannot get from Vanguard or Fidelity. If you pay nothing you get nothing. You get what you pay for and we know that statement is usually true.

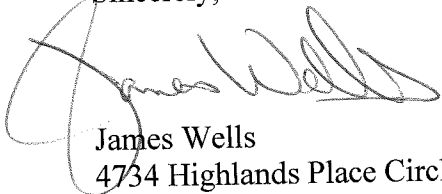
On page 12 of the White House report it says that conflicted payments can also lead to under performance as a result of poor timing and investment decisions. This is one more example of an disingenuous, willfully misleading statement. Underperformance can be a result of just a poor timing of any person making an investment. If two investors invested in October 2007, investor "A" with a financial advisor and investor "B" without the financial advisor it is impossible to say who would do better. What if investor A was told to diversify their IRA account and be more conservative (30% stocks, 20% money market, 50% short term high grade bonds) because the market was at a record high and investor B was given a 401-k computer model suggesting based on their age he/she should be 75% in stocks and 25% intermediate term bonds. Of course investor A would do better. The adviser helped and the model hurt. That model by the way is the Vanguard 401k model used in Fortune 500 companies. I think we both know the outcome.

The investor with the advisor will outperform the 401 k investor without an advisor over the next 17 months. That is not speculation. That is fact.

I have briefly highlighted some genuine inaccuracies in the White House report and I have only scratched the surface. I have only touched the tip of the tip of the iceberg. If you want to proceed forward with your current plan, your current regulation then you will cost people their jobs because I know people are going to close their doors and fire their employees before they will warranty investment advice or that they are in compliance with every rule and regulation in all 50 states, FINRA, SEC and other regulators. In essence you are giving a client the ability to invest risk free because they can sue their broker if the broker warranties his work and makes a simple mistake. One could be silly and say government employees do not make mistakes and therefore do not need to warranty their work. But we know government employees make mistakes from the White House down to a private in the army and yet there is no law or regulation that makes them warranty their job responsibilities. That regulation is abusive to say the least and I hope someone finds it unconstitutional. It is certainly a bias, bigoted rule.

No one I know wants another US Government intrusion in their lives. Stop ramming things down our throats. Your arguments are based on lies and false data slanted on purpose to push the agenda one way. If you want the truth ask me to testify under oath. Otherwise we lose another piece of our freedom to government. God bless you.

Sincerely,



James Wells
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