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Definition of an Investment Advice Fiduciary

Comment On: EBSA-2023-0014-0001
Retirement Security Rule: Definition of an Investment Advice Fiduciary

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Submitter Information

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General Comment

Please don't ERISA-fy retirement accounts. Doing so will undoubtedly increase compliance costs and liability exposure, which in turn will have the unfortunate (for the consumer) consequence of more IRA accounts becoming "orphaned" as it's not worth the liability exposure to be a fiduciary for a small brokerage account. Further, clients understand the difference between brokerage where they choose to pay commissions vs. choosing to pay an ongoing management fee for a fiduciary relationship and advice. Clients should have that choice as they've had for decades. We've already seen small IRA accounts get orphaned by mass produced letters announcing their account no longer meets the firm's minimum. Bottom line, I can't take on a fiduciary responsibility on a small IRA account...the math doesn't work and it would not be prudent. You also can't legislate morality. I do what's right for my clients and will continue to do so whether it's a best interest or whatever else the DOL wants to name it, but as a non-practicing former litigator I know full well the differences in liability exposure for different legal standards. Helping people invest their lifetime savings for a dignified retirement is an honor and great responsibility. Triggering a fiduciary status for advice on retirement brokerage accounts is like trying to shove a square into a round hole in terms of rule making. Thank you taking the time to read my letter and please let us get back to the important job of helping Americans invest and prepare for retirement without bogging us down with additional and unnecessary regulatory rules that will ultimately hurt our shared interests—protecting and caring for our clients.

I’m writing to express my concerns with the Department of Labor’s (DOL) Retirement Security rule proposal. I believe this proposal will harm millions of low- and middle-income households by limiting access to personalized financial guidance and advice.

As a financial professional, I’m already required to act in the best interests of my clients under the SEC’s Regulation Best Interest (Reg BI) and, when considering annuities, applicable state laws that impose similar requirements. Together, these regulations ensure that my clients and I can focus on working together to build responsible savings and investments habits.

This proposal has the potential to upend our existing, comprehensive structure by limiting our ability to help our clients safeguard their savings in a manner of their choosing. In particular, the previous iteration of a substantially similar DOL rule resulted in a meaningful reduction in services offered to millions of low- and middle-income households. I am concerned that the resurrection of this rule is expected to exacerbate the racial wealth gap by roughly 20% due to a disproportionate impact on Black and Hispanic communities.

I hope the DOL will consider the harm the previous fiduciary rule had on communities, as well as the changes in securities regulations that came with the adoption of Reg BI and state insurance suitability rules and withdraw the Retirement Security rule proposal.