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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

The Honorable Lisa M. Gomez
Assistant Secretary of Labor
Employee Benefits Security Administration
U. S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

RE: RIN 1210-AC02

Dear Honorable Gomez,

I am writing this letter to express my fears over the new U.S. Department of Labor (DOL) proposed fiduciary rule that will threaten my ability as a financial professional to serve the many lower and middle-income Main Street families who are currently able to access from me and my colleagues sound, unconflicted financial advice to advance their financial and retirement security.

This new rule proposes to revise the current fiduciary rule under the Employee Retirement Income Security Act (ERISA), governing the advice that financial advisors provide their clients. This proposed revision largely resurrects the failed 2016

DOL “fiduciary-only” rule that limited savers’ choice of advisors and investments by imposing excessive amounts of costly red tape and duplicative administrative requirements on the investment transactions they make for their retirement.

With this proposed revision, DOL ignores the real-world experience decisively demonstrating that the 2016 DOL fiduciary rule significantly harmed lower and middle-income workers before being thrown out in 2018 by a federal appeals court. The adoption of the 2016 fiduciary rule resulted in more than 10 million smaller retirement account owners losing the ability to work with their preferred financial professionals. Main Street savers could simply not afford to retain advisors under the fiduciary-only model of regulation. Moreover, if DOL adopts a new rule that is like the 2016 rule, recent research concludes the retirement savings of 2.7 million individuals with incomes below $100,000 would plummet by $140 billion over ten years. Black and Latino retirement account owners would be among the hardest hit, increasing the racial wealth gap by 20 percent.

Since the 2016 fiduciary rule was invalidated, regulators at the federal and state levels have adopted significant new regulations that directly address the conflicts of interest that DOL asserts it is seeking to address with its new proposed rule. The U.S. Securities and Exchange Commission (SEC) adopted Regulation Best Interest (Reg BI), which requires all broker-dealers and their registered representatives to always act in their client’s best interest without putting their own interests first. In addition, more than forty states have now enacted an updated National Association of Insurance Commissioners (NAIC) model regulation that requires insurance producers to satisfy a best interest standard that aligns well with Reg BI. In addition, DOL adopted its own new rule in 2020 that complements the federal and state regulatory regime.

Adoption of this proposed rule is both dangerous and unnecessary. It is dangerous because it will leave millions of Main Street investors on their own in trying to achieve retirement security for themselves and their families. It is unnecessary because there are already federal and state regulatory structures to protect consumers, and DOL has provided no evidence that consumers are not being protected by the existing rules.

I ask that you please withdraw the proposed final regulation and proposed amendments to protect the interest of Main Street Americans.

Please read this very personal note about me and my family and how much you are continuing to affect our business with our clients!

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Everything outlined in this letter expresses my concern regarding the on-going attempt by Congress to harass professionals who work in the Financial Services Industry. For over 43 years, I have been a financial advisor for thousands of clients and have assisted them in saving and preparing for retirement. Many of whom, without our encouragement to save and plan, would have never achieved financial security for their retirement years! I can provide numerous testimonies from these clients who I now consider part of my extended family. I am now working with their children and grandchildren, too. My two sons grew up seeing me work with my clients over many years and both became Financial Advisor Fiduciaries and joined me in business. As an insurance professional, my wife also works in our business providing Asset Care protection for our clients to provide benefits for potential catastrophic long-term care expenses. For many of my earlier years, I could devote full time to working with potential and existing clients. However, in more recent years, all of us in our business are spending many hours trying to comply with all the regulations you pass to ensure ethical behavior. One of my first continuing education courses was entitled, "Charting An Ethical Course." It was a great course and it outlined everything for a professional to conduct business in an ethical manner!

Sincerely,
Stephen Cross Sr

Kansas