

PUBLIC SUBMISSION

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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

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The Honorable Lisa M. Gomez
Assistant Secretary of Labor
Employee Benefits Security Administration
U. S. Department of Labor
200 Constitution Avenue, N.W.
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Re: RIN 1210-AC02

Assistant Secretary Gomez:

I am writing to express serious concerns with the Department of Labor's (the "Department") proposed Retirement Security Rule: Definition of an Investment Advice Fiduciary and Associated Prohibited Transaction Exemption Amendments (collectively, the "Proposal"). For the reasons summarized here and explained in more detail in our comments below, I strongly urge the Department to withdraw this fundamentally flawed Proposal.

The Proposal, however, will have a detrimental effect on the financial security profession, limiting the ability to provide holistic retirement planning and the essential financial security that clients are seeking. It significantly broadens the definition of investment fiduciary advice while restricting the available exemptions relied upon by financial security advisors. The Proposal overlooks the consequences both for the financial security profession and the Americans who depend on us.

The Proposal Limits Access to Advice

Imposing a fiduciary-only, fee-only model for advice would exclude retirement savers, especially those with low- and middle-income, who lack the required account minimum, denying them essential retirement advice. The "Best Interest Rule" allows for an advisor to do what's best for the customer and not put his career in jeopardy. Fiduciary in court means the advisor always pays.

The Proposal Seeks to Ignore New Protections in Place Developed by Federal and State Regulators

The playing field has changed since the DOL's last attempt in 2016. The SEC, FINRA and nearly all state insurance regulators have adopted new guidance and regulations that improve consumer protections, including adopting best interest standards, and enhanced disclosures. The SEC's Regulation Best Interest has been in effect since 2019, and the NAIC Model Act for Annuities has been adopted by 40 states. What evidence do you have of a widespread problem, inefficiency, or gap in the current regulatory structure?

The Proposal Makes it Harder to become a Financial Security Professional

The regulatory burden is already a substantial weight on my practice, my clients, and my ability to serve more people. I also believe your rule will limit opportunities for mentorship and apprenticeship of new advisors by more senior ones.

The financial security profession currently maintains stringent qualification and licensing requirements. However, the Proposal's additional and excessively burdensome procedures, aimed at addressing a few "bad actors," will significantly impede existing professionals to continue their careers and discourage new entrants, which is troubling as we currently need more financial advisors, not fewer. In fact, the profession has been flat – despite the \$12 trillion dollar gap between what people have and what they should in protection.

I urge you and the Department to withdraw the proposed final regulation and proposed amendments to protect the interests of America's workers, families, and retirees.

Thank you for your consideration.

Tom Archer