

# PUBLIC SUBMISSION

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**Docket:** EBSA-2023-0014  
Definition of an Investment Advice Fiduciary

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

**Document:** 1210-AC02 comment 00093 Mills 12182023

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## Submitter Information

**Name:** Robert Mills

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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 very concerned that the new Department of Labor proposed fiduciary rule will REDUCE my ability as a professional to help the many families who can access from me sound, equitable financial advice to help with 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. Adopting 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 not afford to retain advisors under the fiduciary-only regulation model. Moreover, suppose DOL adopts a new rule like the 2016 rule. In that case, 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 most brutal 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 clients' best interest without putting their 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 the 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, 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 yet to provide evidence that the existing rules are not protecting consumers.

Please withdraw the proposed final regulation and amendments to protect middle-class Americans' interests.

Sincerely,  
Robert Mills  
Mills, McCaghren & Associates  
1500 Industrial Blvd. Suite 102  
Abilene, Texas 79602

