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January 27, 2012

The Office of Policy and Research
Employee Benefits Security Administration
Room N-5718
U.S. Department of Labor
200 Constitution Avenue
Washington, DC 20210
Attention: Definition of Fiduciary—Data Request
Attention: Joseph S. Piacentini

Dear Mr. Piacentini:

Thank you for your letter of December 16, 2011, asking for our input with respect to the expanded regulatory impact analysis ("ERIA") being developed by the Department of Labor's Employee Benefits Security Administration ("EBSA"). The ERIA relates to the work being done by EBSA on a reproposed regulation defining the term "fiduciary" under section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 ("ERISA").

Specifically, you asked a series of questions with respect to a study prepared by Oliver Wyman that we submitted on April 12, 2011. The study assessed the impact of the originally proposed regulation on IRA customers. This letter is being submitted on behalf of 11 firms that sponsored the Oliver Wyman study.

<u>Opportunity to Work Together</u>

We are very appreciative of the opportunity to contribute to this important public policy dialogue as EBSA works on its ERIA and a reproposed regulation. Like EBSA, our clients are keenly interested in the development of workable rules that promote retirement security for Americans across the country. In that regard, it is our hope that this letter can help EBSA with its ERIA.

We would also hope that we can find additional ways to enhance communications between EBSA and the private sector with respect to this important topic. Meetings between EBSA and the private sector to discuss the ERIA and the fiduciary definition could be very helpful in enhancing the workability and effectiveness of any proposed or final rules. We want this process to work and we believe enhanced communication is critical to an effective process.

<u>Oliver Wyman Study</u>

The Oliver Wyman study drew upon publicly available data as well as private data that was provided by the 12 participant firms and aggregated by Oliver Wyman. The firms participating in this study turned out to collectively service over 19 million IRA holders with $1.79 trillion in assets through 25.3 million IRA accounts. The study was a very substantial undertaking and the dataset reflects approximately 40% of the U.S. IRA market on an account basis as well as on an asset basis. In that regard, we are very pleased that EBSA is reviewing the study and using it in conducting the ERIA.

To summarize, here are the key findings of the study:

<u>IRAs are the fastest growing accounts holding retirement savings.</u>

- IRA assets have increased from 16% of retirement market assets to 27% in the 20 years from 1990 to 2010.

<u>IRAs are widely held by small investors.</u>

- Nearly 40% of IRAs in the study sample had less than $10,000.

<u>Small investors overwhelmingly favor brokerage relationships over advisory relationships.</u>

- 98% of accounts of investors with $25,000 or less in their IRAs were in brokerage relationships.

<u>The proposed rule could eliminate access to meaningful investment services for over 7 million IRAs.</u>

- IRA investors would no longer be able to receive investment services and help as part of a brokerage relationship:
  - The proposed definition of a "fiduciary" would appear to make practically every investment-related conversation or interaction with a client subject to a fiduciary duty.
  - If a registered representative is found to be a fiduciary, any transactions on behalf of a client under a brokerage agreement could be transformed into prohibited transactions, giving rise to severe sanctions and penalties.
- Because of advisory account minimums, 7.2 million current IRAs would not qualify for an advisory account with any firm in the study.

The proposed rule could well result in hundreds of thousands of fewer IRAs opened per year.

- In 2010, firms in the study sample opened approximately 890,000 brokerage IRA accounts with assets of less than $10,000.
- Under the proposed rule, small investors interested in opening an IRA would have less access to investment professionals, making it less likely that they would open an IRA.

Many IRA holders would have reduced choice of investment professional.

- Over one-third of client-facing financial professionals in the industry would not be licensed to help retail investors with their IRA account needs under the proposed rule (as they would not be registered investment advisors providing services on a fee basis).

The brokerage IRA investors who could be served in an advisory model would likely face increased costs as a result of the rule-driven change.

- In the study sample, estimated direct costs for these investors would increase by 75% to 195%, depending upon IRA account size.

Scope of the Study

A number of your questions related to the scope of the Oliver Wyman study, such as how the participating firms were selected and how they differed from non-participating firms. Please note that neither Davis & Harman nor Oliver Wyman selected the participating firms. On the contrary, 12 financial services firms came together seeking information as to how the originally proposed regulations would affect the portion of the IRA market served by them. To achieve that goal, the 12 firms retained Davis & Harman LLP, which in turn hired Oliver Wyman to perform a study based on data submitted by the 12 firms. These firms represent a range of business models from national and regional full service firms to independent broker dealers and discount brokers.

The firms in the other 60% of the market were not participants in the study. Accordingly, aside from general references based on publicly available data, the Oliver Wyman study did not make any findings with respect to the impact of the proposed rule on that 60%, because Oliver Wyman did not have (and does not have) the data to do so. However, as noted, the study included 19 million account holders, and 25.3 million accounts. Nearly 28% of the accounts, i.e., 7.2 million accounts, were expected to be significantly negatively impacted by the original rule proposal, making it a critical tool for EBSA to consider in performing its ERIA.

As directed by the 12 firms, the study examined the effect of the originally proposed regulation on three issues:

- Access to investment services from a licensed investment professional.

- Investor choice of business model, in terms of commission-based brokerage model versus fee-based advisory accounts, as well as breadth of product choice.
- Cost impact to IRA holders.

Many of the questions raised in your December 16 letter, such as the interaction between business models, advice interactions, account positions and trades, and performance, relate to issues not addressed by Oliver Wyman and for which Oliver Wyman does not possess sufficient data (if any) to respond. The data provided was intended to address the above three issues.

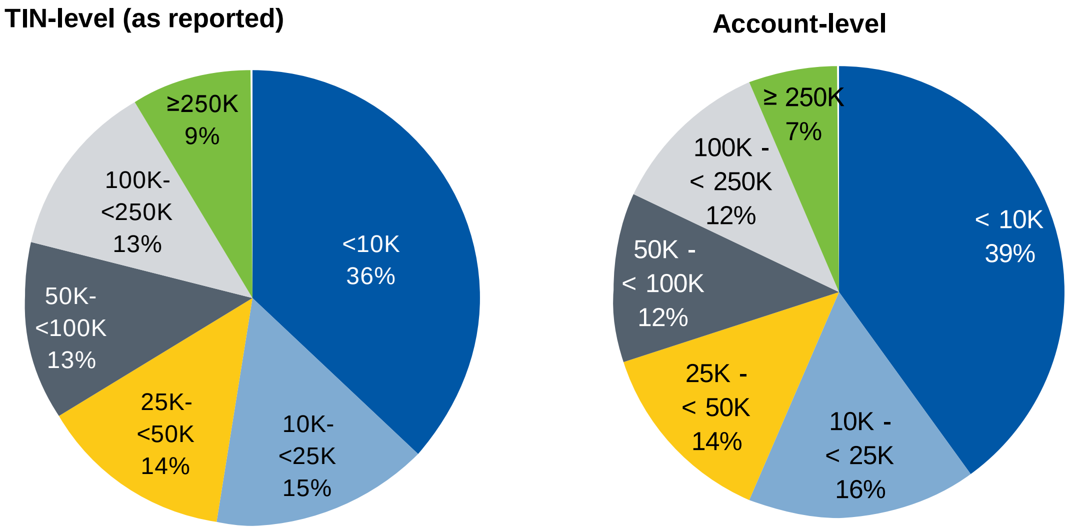
We certainly understand why you are raising this challenging set of questions. However, we are not aware of any database that contains all of the information that is requested. Moreover, it is exceedingly difficult to draw conclusions regarding the interactions among the factors listed above because, for example, of the difficulty in holding all other factors constant. Such factors include the quality and experience of an investment professional, short and long-term market trends and fluctuations, account size, and the level of service provided. But we agree that those questions should be answered and we look forward to the ERIA's examination of these issues.

In short, we are providing the information that we can provide in light of (1) the data that Oliver Wyman has, and (2) sensitivities regarding confidential and proprietary information. We look forward to further opportunities to assist with respect to this important project.

Account Holders

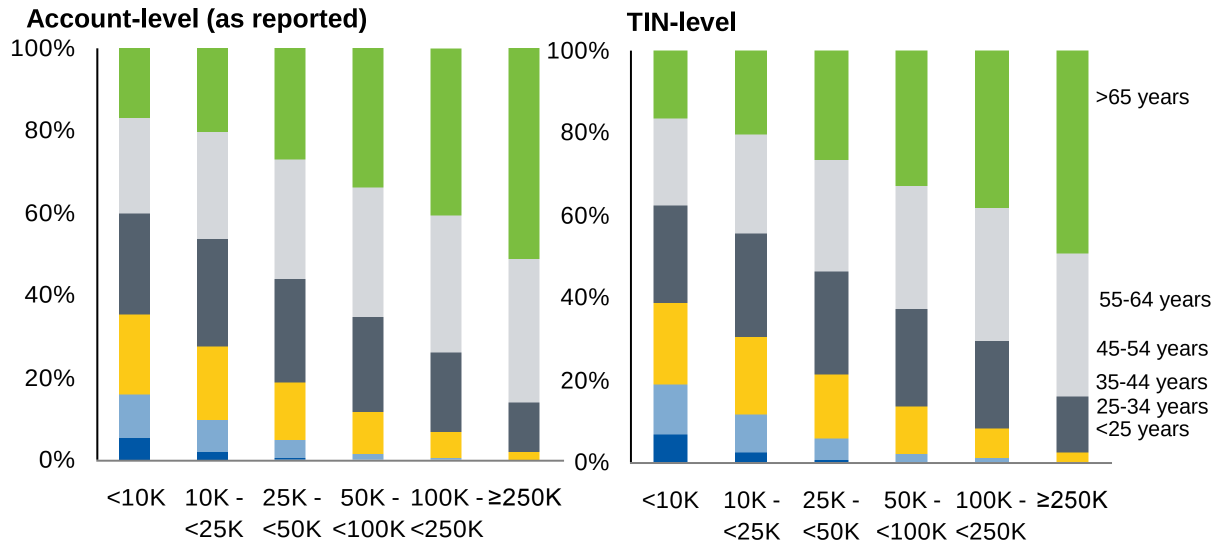
You raised an excellent question regarding the materials on pages 10-11 of the Oliver Wyman study. Oliver Wyman gathered data from study participants at both the Tax Identification Number ("TIN") level and the account level. Oliver Wyman used TIN-level data in the report to show distribution by IRA size (Figure 6, also set forth below). The rationale for using TIN-level data is that it most directly corresponds to an individual; and the participant firms were able to provide TIN-level data at an aggregate basis. The account-level data is largely consistent with TIN-level data. For example, if Oliver Wyman had instead used account-level data, the number of accounts under $25,000 would have been 4% greater than the number of TINs with IRA savings under $25,000 (i.e., 55% of accounts vs. 51% of TINs).

Investors by IRA size segment
IRA account holders by total IRA size, year end 2010



By contrast, Oliver Wyman used account-level data in the report to show age distribution by IRA size segment (Figure 7, also set forth below), as firms were better able to break out the age segmentation by account. Though Oliver Wyman received less data at the TIN-level, based on a comparison with account-level data, the relative distributions by asset size and age appear to be very similar.

Age composition by IRA size segment
(%), year-end 2010



Oliver Wyman therefore determined that it was unlikely that the analysis presented in the study would be materially affected if the analysis were based on account holders, rather than accounts.

Direct and Indirect Costs

You also asked for information on indirect costs with respect to the cost comparisons on pages 21-22 of the study. Again, you raise excellent questions. Oliver Wyman sought to gather both direct and indirect costs from the participating group members. The comparisons included in the report are based on direct costs only, however, because the direct cost information was clear and accessible and could be presented with confidence. There was a lack of uniformity among the participating firms in the manner in which they maintain information on indirect costs, as well as with their respective ability to break out indirect costs by IRA size segments, so that any presentation of precise numbers would not have been internally consistent.

Notwithstanding potential definitional issues, limitations of direct comparability and the reduced sample size of firms that were able to produce indirect cost information, Oliver Wyman found that the brokerage model also appears to be less expensive on a total cost basis across all IRA size segments analyzed.

Account Holdings and Activity

Oliver Wyman did not collect, and does not have, information on the distribution of accounts by average number of transactions. Firms provided the total number of trades per IRA size segment in 2010, and Oliver Wyman calculated a simple average based on number of accounts per IRA size segment. Oliver Wyman does have data on the percentage of accounts with five or fewer transactions by IRA size segment from more than half of the study participants; these figures are as follows:

% of accounts with 5 or fewer transactions

<10K	10K - <25K	25K - <50K	50K - <100K	100K - <250K	≥250K
62%	58%	53%	46%	39%	38%

Data

You had asked whether Oliver Wyman has separate statistics for discount versus full-service brokerage. As arranged with the participating firms in connection with the provision of data, Oliver Wyman has not retained any firm-specific data. Oliver Wyman does have separate data for discount brokerage versus full service brokerage. However, Oliver Wyman concluded that it did not have sufficient data to make any findings regarding the differences between the two types of brokerage. Moreover, disclosure of the separate data could reveal confidential information, a further and very important reason why the separate data cannot be disclosed.

Conclusions

The conclusions of the Oliver Wyman study remain critical to this public policy debate. The elimination of the brokerage model with respect to IRAs would have significant adverse effects on retirement security, resulting in millions of IRAs losing access to the services of an investment professional and, hundreds of thousands of fewer IRAs being opened each year.

Thank you for the opportunity to participate in this important public policy dialogue.

Sincerely,

/s/ Kent A. Mason

Kent A. Mason

cc: Phyllis C. Borzi
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Senator Roy Blunt
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