

# PUBLIC SUBMISSION

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**Docket:** EBSA-2010-0050

Definition of the Term ‘‘Fiduciary’’; Conflict of Interest Rule—Retirement Investment Advice; Notice of proposed rulemaking and withdrawal of previous proposed rule.

**Comment On:** EBSA-2010-0050-0205

Definition of Fiduciary; Conflict of Interest Rule-Retirement Investment Advice and Related Proposed Prohibited Transaction Exemptions; Hearing and Comment Period Extension

**Document:** EBSA-2010-0050-DRAFT-0346

Comment on FR Doc # 2015-14921

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## Submitter Information

**Name:** Anonymous Anonymous

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## General Comment

I have been following the discussions related to the Department of Labor proposed Investment Advice rule, and I have serious concerns this rule will impair my options to choose how I invest for my retirement. Rules and regulations around investing are already intensive and cumbersome for brokers, and I believe most of the provisions of this new rule will create additional barriers and costs for middle-class investors.

The fiduciary requirement will have the opposite effect of the intent, as the cost of advice will most certainly rise. The added cost and liability will force many brokers to limit the types of customers they will serve. Already, many Registered Investment Advisors who operate on a fee-based system (supposedly putting the best interest of the client above their own) will not take on a client unless they already have a certain level of investment assets (oftentimes \$50,000 - \$100,000). In addition, this fee-based system practiced by advisors results in a fee that is usually 1% (or more) of the asset value per year. Over 20 - 30 years the cost of this annual fee will far exceed the cost of any upfront commission and lower cost service fees that seem to be of concern to the DOL. How does this help the middle-class family?

In reading the fact sheet I noticed Secretary Perez mentions some SEC rules. Maybe he is unaware there are several other state and federal agencies that help to ensure brokers are looking out for the best interest of the client. FINRA already has rules in place to ensure that

investors receive advice that is appropriate:

FINRA Rule 2111 requires, in part, that a broker-dealer or associated person "have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the [firm] or associated person to ascertain the customer's investment profile." In general, a customer's investment profile would include the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs and risk tolerance. The rule also explicitly covers recommended investment strategies involving securities, including recommendations to "hold" securities. The rule, moreover, identifies the three main suitability obligations: reasonable-basis, customer-specific, and quantitative suitability.

FINRA also has rules in place to ensure that investors receive a full disclosure of fees and expenses:

FINRA Rule 2210 prohibits firms and registered representatives selling mutual funds from making false, exaggerated, unwarranted or misleading claims in communications with the public. The rule requires firms to file certain communications involving registered investment companies, including mutual funds, and exchange-traded funds (ETFs), with FINRA's Advertising Regulations Department. Similarly, FINRA Rule 2211 governs this area for institutional sales material and correspondence.

These rules also require disclosure of fees, expenses and standardized fund performance in mutual fund performance sales materials. This requirement improves investor awareness of the costs of buying and owning a mutual fund. It facilitates the comparison of funds and makes the presentation of standardized performance data more prominent in the sales material.

It is my understanding that brokers are subject to regular audits to ensure compliance with these rules. There are many sources available for Americans to research and make sure they are hiring a broker or an investment advisor that is ethical, and puts the clients interest first. I believe there are already plenty of rules and regulations to protect the investor, and this proposal from the DOL will not provide any added protection.

In reality it will:

Leave most middle-class investors without professional investment advice.

Increase the cost of investment advice.

Create additional repetitive rules.

Open the door to excessive and frivolous lawsuits.