From: O'Reilly Pate, Betsy [mailto:boreilly@metlife.com]
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To: EBSA, E-ORI - EBSA
Subject: RIN 1210-AB32

While it is true that “in the absence of fiduciary status, persons who provide investment advice would neither be subject to ERISA's fundamental fiduciary standards, nor accountable under ERISA” It is not true that these advisors will not be held accountable under other existing regulatory statutes. The Department of Labor is attempting to extend its oversight to matters it has not been sanctioned to govern. Other regulatory agencies are culpable for advisors behavior and they have created safeguards and consequences for noncompliance. The DOL’s proposal does not consider these other agencies or how its new rule will work in conjunction with those that already exist. This will only be onerous for those who are subject to the regulations.

The Department of Labor concludes that enacting their proposed fiduciary standard may or may not save citizens billions of dollars in fees. American Funds recently conducted a study that shows people who work with a financial advisor realize more gains in the market than those who participate in the market without professional advice. It has long been accepted in our field that uneducated investors rely on emotion rather than logic when making investment decisions. They are generally motivated to buy only after the markets have shown a significant gain, thereby purchasing at the highest possible price. Then, they sell off after the market declines, likely out of the fear of losing everything. Buying high and selling low is the plague of unsophisticated investors. Professional advisors encourage clients to stay the course in Bear markets. They create safety nets of cash savings that can be accessed during market downturns. Holistic advisors use insurance products to complement investments and mitigate risk. Annuity products offer downside market protection through death benefits and guarantee income long after all cash value in the account is exhausted. These are commission based products that are only available from licensed professionals. The “fiduciary” proposal would remove these products from being available for qualified money. Low to Middle income investors will not seek professional advice if they have to pay a fee out of pocket. However, they do feel they can afford to place their money with an insurance company who pays the advisor for the privilege of professional advice because the only cost is time to eliminate the rear end surrender penalty. This has the added benefit of encouraging long term savings.

Clients I have worked with, who self -direct their 401k, feel overwhelmed and fearful of having to navigate this unfamiliar subject matter alone. Employers do not offer any guidance or insight regarding these plans. HR personnel routinely dismiss questions regarding investments choices and appropriate saving rates. They state they are forbidden by law to offer such advice. Is it the ERISA rules that cause them to neglect this important duty? When I rollover 401k funds to an IRA, I am not “self-dealing.” I am earning a wage for performing very specialized and important work. I spend a great deal of time and attention to product details, market conditions, financial theory and the regulatory environment. I deserve to be compensated for my work and I take a great deal of pride in the value of the services I provide. I believe that my industry is abundant with credible advisor’s whose integrity is beyond reproach. For those who are not, there are acute ramifications, even without the Department of Labor’s proposed Fiduciary Rule.

Thank You!

Betsy O'Reilly Pate

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