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Definition of the Term ‘Fiduciary’; Conflict of Interest Rule—Retirement Investment Advice

Comment On: EBSA-2010-0050-3491

Definition of Term Fiduciary; Conflict of Interest Rule-Retirement Investment

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General Comment

I would urge the Department of Labor to maintain its definition of 'fiduciary' for purposes of the Employee Retirement Income Security Act (ERISA). The Executive has asked you to consider three main questions, namely:

Whether the anticipated applicability of the final rule has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice;

Whether the anticipated applicability of the final rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees; and

Whether the final rule is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services.

These questions are clearly tailored to one side of the relationship that exists between investors and their clients. While account managers and investors may be limited in their investment choices, these limitations are put in place to benefit the holders of these accounts. Retirement planning and other long-term planning accounts significantly benefit from having a fiduciary relationship. Having a fiduciary eliminates significant conflicts-of-interest; long-term investor gains are still realized, and perhaps more importantly, the fiduciary relationship protects clients from over-zealous or nefarious investors preying on client trust.

If we have been taught anything by recent ebbs-and-flows within the market economy, it is that, with respect to investment and other complex economic factors, the government should not rely on two things: 1) Honesty from the financial sector towards the public's best interest, and; 2) the average citizen to understand the full risks and dangers associated with non-fiduciary financial relationships. It is worrisome when one of the central complaints made by financial advisers is that the costs of imposing a fiduciary relationship/standard would be too great on the industry. Furthermore, these costs would then be shifted to the individual investors, which represents the notion that these financial advisers are solely business-driven individuals, out to make a quick buck for themselves and their shareholders. Simply put, in the interests of account holders and the American people, suitability is not suitable.