

PUBLIC SUBMISSION

Received: March 16, 2017
Status: Pending_Post
Tracking No. 1k1-8var-lgdn
Comments Due: April 17, 2017
Submission Type: API

Docket: EBSA-2010-0050

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

Document: EBSA-2010-0050-DRAFT-16533

Comment on FR Doc # 2017-04096

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General Comment

The issue I have with this rule is that it paints firms as all being evil to their clients, despite whether or not a company does act in their clients best interest already such as even selling only products that they would personally buy themselves. By products I mean fixed indexed annuities which are best in class products.

Where this rule seeks to demonize an agent getting a commission, it seems to suggest that something like a 1%+ annual fee is automatically a better way to go and is in the client's best interest. However, has it actually ever been taken into account that this 1% fee comes from the client's assets whereas a best in class fixed indexed annuity pays a commission that isn't charged from the client's assets and for best in class products, they actually pay a lower commission?

Doing the math, a 5% commission on \$10,000 is \$500 paid to the firm of which a portion goes to the agent doing the business and the rest pays employees, bills, etc. Again, this didn't come from the client's assets, they have all \$10,000 in the best in class product. However, with a 1% fee, the firm charges this 1% from the client's

assets and charges it indefinitely on an increasing balance as it grows.

In trying to combat bad apples, the good apples are also being thrown under the bus, even if they're selling best in class products and acting in the client's best interest.

The way this rule is presented to people, that unless someone is a fiduciary, they won't or can't ever act in someone's best interest. What about somebody like Bernie Madoff, wasn't he a fiduciary, and therefore, automatically acting in people's best interest? Taken a step further, there must never be any issues with doctors or lawyers, ever?

Along with other aspects of this rule sounding like they're not fully understood yet, how is this going to be a good thing if it's going to kill the firms that are in their swinging for their clients best interest?

I think that the Department of Labor should go back and re-evaluate the effect that this will have on the clients and firms that serve their clients best interests.