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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
US Department of Labor
200 Constitution Avenue NW
Washington DC 20210

Attn: Fiduciary Rule Examination

I strongly urge the Department of Labor to delay and to re-write the fiduciary rule. I have no quarrel with the concept of requiring advisors to make investment recommendations that are in the best interest of their clients. Who doesn't want a financial advisor that makes recommendations that are in one's best interest? Who doesn't want their financial advisor to be free of conflicts of interest? Unfortunately, these concepts are about all the general public understands about this rule. This is quite clear from many of the comments to DOL. However, the general public does not understand how this rule will be implemented: how expensive and limiting it will be to their access to investment products and even to financial advisors. The examples of what this will really mean are explained below.

"Best interest of the client" is a subjective standard that inherently cannot be objectively defined, delineated or measured. Legislating the idea that level compensation will somehow eliminate conflicts of interest and, therefore, result in recommendations that are then in the "best interest of the client" is terribly misguided. "Best interest" is something that absolutely must be determined on an individualized basis. Trying to reduce individual investors into a "one size fits all" model is not a concept that is applicable to individual financial advice. While goals and objectives may often be abbreviated, how individual clients want to achieve those goals and objective can be very different while remaining equally legitimate. Just as individual investors come in all shapes and sizes, so do investment products. Level compensation does not make all investment products equal, nor does it eliminate conflicts of interest for advisors. Clients can still be hurt by ill-advised and/or bad products with level compensation. Moreover, as the examples and reasons illustrated below show, conflicts of interest exist regardless of the compensation method. They cannot be eliminated through regulations and legislation. Furthermore, regulations simply cannot turn an unethical advisor into an ethical advisor. Enforcement of the rules and regulations that are already in place is the approach that best weeds out the wrong-doers and preserves the relationship that those responsible advisors have with their clients.

With the current rules set to go in place, the DOL has made regulations that are more like twisted pretzels. Level compensation, favoring assets under management (AUM), discouraging commission products have all contributed to unintended consequences that have increased the cost to invest across the board. With level compensation, the examples below show how smaller investors are particularly

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hurt because the cost to invest compared to the amount invested is disproportionately high. This will preclude help for the small investor, the client that truly needs help. These rules are supposed to be protecting clients, but closing the door on some of the most vulnerable is not the answer. Further, these rules will likely hinder a client from making changes in his or her portfolio that good planning might dictate simply because of the unreasonable cost in doing so. This does not seem to be in the best interest of the client -- the very purpose of these rules.

Robo-advisors are not the answer for small advisors. Just briefly, self-reporting of input is subject to many problems - inaccuracies due to lack of understanding or knowledge, inflated perceptions of risk tolerance, no adjustments for changes for a variety of reasons, e.g. because the investor doesn't recognize the importance of changes as they occur, procrastination, etc., just to name some of the more obvious issues. Robo-advisors have no oversight or foresight for the client. They don't know when there has been a life change for the client, and they cannot pick up a clue that a human advisor notices in a face-to-face meeting with a client. These are just a few of the ways that an advisor pro-actively helps a client plan for his or her future and make recommendations that are in a client's best interest.

Cookie-cutter advice may be just that. Algorithms simply cannot accommodate the unique facets of a client's circumstances the way a human advisor can. Algorithms cannot establish a level of comfort or trust with a client or gather information about a client that a human advisor learns in an on-going relationship. Even if there is some human interaction with robo-advisors, it is neither consistent nor on-going; thus, a client has to start all over again, telling someone about themselves, working to establish some trust level, etc. Robo-advisors cannot and do not replace all kinds of communication: direct, subtle, sometimes unspoken, that a human advisor has with a client. Robo-advisors simply cannot know a client the way a human advisor can, so they cannot establish the first step that help human advisors make recommendations that are in the best interest of their client.

I would like to tell you how I have worked with clients, real life examples of how the fiduciary rule will be specifically implemented, and the impact it will have on my clients.

I have been the financial services industry for almost 45 years, five years in money center banking, the rest as personal financial planner. For 12 years, I was an employee of financial planning firms, and I have had my own practice since January 1991. I am a registered investment advisor under my own name, and I am a registered representative. My securities licenses are held at an independent broker-dealer firm, and I am an independent contractor. I am also a Certified Financial Planner. When I am working with a client on generic planning issues, I charge an hourly fee. When a client needs to implement their plan with specific investment products, the clock turns off, and I offer specific investment recommendations. I have always held myself to the standard of making recommendations that are in the best interest of my clients.

All of my clients have long-term goals. Long-term goals means long-term oriented investment products. For the most part, I believe that clients should not purchase an investment product if their time-frame for that product is less than five years. Almost all of my clients have been invested for far longer than five years.

I do not use the Assets Under Management (AUM) approach when making recommendations to clients. With AUM, the advisor charges the client typically 1% every year on the fair market value of AUM for as long as the advisor and the client work together; this is the compensation to the

advisor. Moreover, there maybe other smaller fees involved, i.e. transaction fees, custodian fees, program fee, etc. that are client's responsibility as well.

Instead, I have chosen to use commission based mutual funds with very low annual operating expenses when making recommendations. These funds have an up-front, one-time only sales charge for A shares. The sales charge starts a 5.75% for initial purchases under $25,000 and up to 0% at a $1,000,000, with no back-end fee. Clients are able to use rights of accumulation with the than current market value of their accounts when determining what sales charge will be levied on new purchases. Clients are also able to take advantage of a Letter of Intent, which can also help move their current investment purchase to higher less expensive sales charge if the current value of their accounts and additional purchases during a 13 month period will equal the dollar breakpoint at which the less expensive sales charge will apply. These options help to reduce the cost to invest for a client investor. In addition, if a client wants to buy a different fund in the same fund family for whatever reason (maybe goals and objectives have changed over time), there is no sales charge on this exchange. Further, dividends and capital gains can be reinvested at NAV (net asset value) meaning no sales charge. Depending upon changing goals and objectives, clients can change from reinvesting dividends and capital to receiving these in cash and back again at no penalty or sales charge.

Thus, even if an original purchase is made at the 5.75% sales charge, in approximately five years, a client will have a cost to invest that is at break even with the AUM approach. After five years, the AUM will cost more every passing year than the commission mutual fund. As stated above, I don't think that a client should be considering an investment product if their time-frame is not at least five years, and preferably much longer.

Since the 12(b)1 fees for the commission mutual fund are included in the very low annual operating expenses, this comparison is a wash when comparing the annual operating expenses and add-on fees of AUM.

With April 10, 2017 implementation of the DOL fiduciary rules, the broker-dealer where my license is held will eliminate my client's ability to buy A share mutual funds in order to meet the DOL's standard of level compensation. Instead, T shares will be the only way to purchase any investment product. A flat 2.5% sales charge will be levied on all new purchases, and the purchases must be made in a brokerage account as opposed to being a direct investment with the product provider. This means additional fees: a $15 ticket charge on all new purchases regardless of the size of the purchase. There will be no rights of accumulation and no rights of exchange. If a client wants to change from one fund to another in the same family, that exchange will be considered a new purchase with a 2.5% sales charge, never mind that those assets already paid a sales charge. So adjusting investments for a client's changing goals and objectives will become quite expensive, or a client might not want to bear the cost and will be in an investment that truly is not in their best interest to meet the changing goals and objectives.

Further, unless a client is reinvesting dividends and capital gains on April 10, switching from cash to reinvestment after April 10 means that all reinvestments will be made at a 2.5% sales charge and a $15 ticket charge regardless of the size of the dividend or capital gain. Some bond fund dividends are paid monthly; this means $180/yr in ticket charges without even considering the 2.5% sales charges. At the end of the year, some funds will pay a special dividend in addition to a regular dividend and a capital gain. This would be three separate purchases at 2.5% and three $15 ticket charges for a total of $45.

The plan to consider non-grandfathered reinvestments is quite unfavorable to my clients since the flexibility of changing from reinvestment to receiving cash is part of their financial plan: sometimes cash dividends are helpful as an additional source of income or replenishing cash reserves and, when no longer needed, reinvestment is the appropriate option. These added charges completely disrupt this planning option, especially when dividends and capital gains can be reinvested at NAV, no sales charge currently. If dividends remain reinvested to preserve this option, the client is left with liquidating part of an investment to achieve what taking the dividends in cash would accomplish. This means subjecting the client to a taxable transaction on the sale that the client would not otherwise experience. So the client's dividends are exposed to ordinary income tax rates to preserve the NAV purchase, but no cash to pay the tax if needed (which would be available if a client could switch back and forth between cash and reinvestment), and a capital gain tax on the liquidated investment.

For a small investor just beginning to invest, the sales charge of 2.5% may be more attractive than 5.75% up to $25,000. However, this advantage is quickly overcome by the ticket charge. Imagine someone wanting to invest approximately $100/mo or so. I have a young client like this. Of the $100/mo., the $15 ticket charge represents 15% of the investment. When added to the 2.5% sales charge, why would anyone consider an investment? Also, the dividends and capital gains on a small growing account could be completely offset by the 2.5% sales charge and the $15 ticket charge, resulting in the investor being in a negative position. Why would a small investor even think this is a good idea? So much for urging small investors to even begin investing for their futures.

An existing Letter of Intent (LOI) in place before April 10 but that mature after April 10 are not being honored if purchases which would otherwise fulfill the LOI are made after April 10. Apparently, the DOL does not consider LOI a contract. Therefore, client loses the breakpoint purchase they thought they were going to receive when the LOI was established. Not only does the purchase after April 10 lose the expected breakpoint, the purchase made at the time of the establishment of the LOI will also lose the breakpoint that was applied at the time of that purchase. The client loses a cost-to-purchase advantage.

As if things couldn't be any worse, the 2.5% sales charge is likely to be levied on mutual fund money market funds to meet the level compensation standard that the DOL has set. Money market funds are part of arranging a client's financial resources to meet that client's needs, goals, and objectives, but I simply cannot imagine suggesting to a client that a 2.5% sales charge and a $15 ticket charge on a fund that pays 0-.01% is in their best interest. Having a money market fund in a client's mutual fund account has also added to the flexibility and simplicity of managing a client's resources - goals that are generally high on my clients' lists.

It seems that the concept of level compensation is what the DOL believes is the compensation scheme that will preclude advisors' conflict of interest and thus be in the best interest of clients. After all, what client wants an advisor who doesn't make recommendations that are in the client's best interest. Of course that is what a client wants. However, how this standard is achieved under the implementation of rules as the rules stand now is flawed.

First, not all products are the same. Charging 2.5% to buy products that are inherently different does not make them the same. Charging a flat sales charge on very different products is like saying all dresses should cost the same. The current interpretation of the rules like the classic example of trying to fit a square peg in a round hole, except that in this case there are many kinds of pegs of

all shapes and sizes that are now being forced into that single hole. Many different investment products cannot be reduced to and treated like a single product.

Next, while it seems to be clear that the DOL considers AUM as the preferred way for advisors to be compensated, I do not believe that AUM necessarily prevents an advisor's potential conflicts of interest. Conflicts of interest exist regardless of the compensation method. A conflict can exist for an hourly advisor who bills more hours than necessary. An AUM advisor can charge fees that are out of line. I have seen some advisors charge up to 2-2.5%/year and make no apologies for this percentage. I have a client whose advisor was charging 1.8% on the entire account even when 20% of it was in cash. These are real-life examples of level compensation.

Commission investments are often identified as having a greater source of conflict of interest than AUM. AUM advisors like to maintain that this is because they are not paid by product providers and are instead paid by the client directly, so there is no conflict. However, both types of advisors are being compensated based on recommending products to clients. While this may be more obvious with commission advisors, AUM advisors would have no basis for compensation unless clients purchased the recommended investments. Commission advisors are paid a percentage of the dollars invested by the client, and AUM advisors are paid based on a percentage of the dollar value of the investments purchased by the client. So regardless, both types of advisors are compensated by the investments that the client purchases at the advisor's recommendation.

The fact remains that, for a client to be invested, an investment product must be purchased at some point. If an advisor is used to guide that investment purchase, that advisor is paid for that guidance.

With the current rules set to go in place, it seems that the DOL has made twisted pretzels in an attempt to objectively define a subjective standard - make recommendations that are in the best interest of the client. First, for the examples and reasons stated above, level compensation is not going to achieve this result. Second, regulations cannot turn an unethical advisor into an ethical advisor. Enforcement of the rules and regulations that are already in place is the approach that best weeds out the wrong-doers and preserves the relationship that those responsible advisors have with their clients. Next, these rules will preclude help for the small investor, the client that needs help. I cannot see how an advisor can assist the small client and hope to avoid subsidizing that client under these rules. If the client is not subsidized, they will look at the cost to invest and will decline to do so. These rules are supposed to be protecting clients, but closing the door on some of the most vulnerable is not the answer. Further, these rules will likely hinder a client from making changes in his or her portfolio simply that good planning might dictate simply because of the unreasonable cost in doing so. This does not seem to be in the best interest of the client -- the very purpose of these rules.

Thank you for your consideration,

Jane C. Kelley