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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

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General Comment

See attached file(s)

Attachments

fiduciaryrulecomment03032017

3/3/2017

Subject: RIN 1210-AB79 - CFR: 29 CFR 2510 – Citation: 82 FR 12319

Dear Department of Labor:

Perspective: 20-year former employee of investment firm.

Summary: Fiduciary Rule was promoted in the *best interest* of retirement investors to *save them money* and *eliminate conflicts of interests*. It promotes fee-based retirement accounts, which offer mutual funds that commission-based investors cannot access unless they submit to monthly fees. Some disclosure forms already require investors acknowledge that fee-based accounts may actually cost more long term than commission-based accounts do. Supporters deny it will limit investor choice, but it does. Fiduciary rule further confuses investors because it means advice for taxable accounts is not required to be in a client's best interest.

Best Interest and Save Investors' Money. Mutual funds offer no level payment structure for commission-based advisors. Therefore, Fiduciary Rule challenges firms with commission-based accounts to be compliant. Because of that, commission-based retirement investors are now encouraged by advisors to move to "fee-based accounts". If asked directly, the advisor may disclose the fee-based account could cost the client up to 2-4X what the commission-based account did in the prior tax year. For the advisor to suggest a commission-based client move to the more expensive fee-based account would be a prohibited transaction once Fiduciary Rule is implemented. It would be hard to argue that fee-based is in the client's best interest when it costs the client 2-4X what commission-based did and the investment firms already acknowledge in client disclosure forms that fee-based accounts can cost investors more long term than commission-based accounts do.

Conflict of Interest. Fee-based accounts do not eliminate conflict of interest. Fee-based accounts create their own. The unlevel payment structure from mutual funds creates an incentive for commission-based advisors but with a conflict of interest. Fee-based account advisors are motivated to keep a higher asset level in client accounts. What if an investor is best served by selling stock to pay down debt? Then, the advisor for the fee-based account is faced with a conflict of interest, because to recommend sale of assets would reduce the advisor's compensation after the account value falls.

Yes, commission-based accounts create a conflict of interest, but the problem was not the conflict of interest. It was a matter of trust. The only problem arose if the advisor was not trustworthy. The government seems to believe trust can be mandated by Fiduciary Rule. It cannot be.

Does Fiduciary Rule limit freedom of investor choice? Yes, because Fiduciary Rule drives advisors to only offer the more desirable mutual funds in fee-based retirement accounts. Advisors tell those in commission-based retirement accounts they cannot put "new money" into the mutual funds (clients want) in their existing accounts. To invest

in the funds they prefer, they would have to move to a fee-based account. This limits client choice and is costly to the client. Brokerage firms suggest they would not limit choice if mutual funds would offer level payment structure.

Save Investors' Money. Commission-based accounts make asset accumulation more affordable for retail investors with fewer assets. Many investors hope to make more deposits than they actually do. Failure to deposit a lot of assets with fee-based causes erosion of investor assets. It makes the firm and advisor more money. In fee-based accounts, fees are applied monthly — limiting potential gains and adding to any market losses every month. It becomes like a dormant account fee. While you may go years without a trade request, the fees are applied monthly and gradually diminish account value. Fee-based accounts are largely understood to be best suited for high net worth investors. Fiduciary Rule also limits an investor's ability to arbitrate with the firm and avoid court costs.

There are aspects of this rule worth redeeming, but they are limited by the damage the rest of the rule does. Overall, to package something and declare that it will help retirement investors save when it truly does the opposite is unethical. By its very nature, this rule favors financial advisors and large investment firms focused on fee-based revenue – not retail investors.

Investors need to be educated far better than they have been about the true implications of such legislation. The media has poorly covered the facts, and the investment industry has done an equally poor job of guiding the public on how to handle the uncertainty of legislation that, if implemented, could dramatically limit retail investors' retirement savings.

Thank you for this opportunity.