

# PUBLIC SUBMISSION

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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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## Submitter Information

**Name:** Anonymous Anonymous

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## General Comment

The assumptions the Obama administration made to justify the rule was faulty in so many ways it's difficult to know where to start. It's obvious that the administration made a conclusion and then cherry picked data to support their already determined conclusions. It all boils down to this: every Advisor is a crook and we will regulate your behavior, telling you how you will be paid, what is best for your clients and put everyone into a cookie cutter mold for the client and the Advisor.

Treating every Advisor as a crook is not fair to the great majority of us who have strived to put their clients first and have succeeded at doing just that. Boiling it all down to a very low common denominator isn't fair and it isn't warranted.

Clients do not like having the DOL stepping between them and myself. It is more expensive for the clients and it is cutting off the small investor from advice.

Minimums to open an IRA are now 5000 at our firm and 100,000 for clients who insist on paying commission instead of an annual fee, when this rule goes into effect. At my branch that cuts out over 30 of my clients from advice and I will be unable to open accounts for those who can't meet the minimums going forward. This is going to cut the small investor out. Many of my clients do not have the financial savvy to "do it yourself". I see this every week when I look over their 401k statements. Many do not

even know how to go on line and change their investments, so they stay in poor performing and inappropriate funds for many years until they get advice. But this rule will change all of that and the investor is the one who will lose. If people don't have the savvy to change their investments in their 401ks, then how will they be able to go online and use a "robo advisor"? Did the data used to support this idea look into this issue?

What about investor behavior? After 24 years and having gone through a number of market corrections, investor behavior is the most important element to being successful in investing. More times than I can count I advised clients to ride out the dips in the market and they are much better off for it. But for those who are doing it themselves they will have no one to advise them and encourage them to stay the course when the going gets rough. This is the biggest flaw in this rule. Many studies have shown this point to true.

Not only do I support delaying this rule but I support abolishing it all together. It was based on faulty assumptions and false conclusions and should be repealed in full. Not because it will hurt my business, it won't. Actually it will make us more money. Moving from a 12b1 fee of .25% to over 1% as a fiduciary isn't in the clients best interest, in most cases. When clients come in with money to invest, the mutual fund families that we offer are hundreds and even over a thousand deep. The upfront loads are all very similar. So what incentive do I have to purposely chose underperforming funds for the long term success of my clients? This issue wasn't addressed by the DOL. Very, very few firms or Advisors offer only one choice of funds or investments. So with so many choices, why would you assume that our motives are always suspect? Our incentives are aligned w/ the client all along the way. So this isn't an issue that needs 1023 pages of regulations. Please DELAY and REPEAL this rule, in full.