



Office of Regulations and Interpretations
Employee Benefits Security Administration, Rm. N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Lorelei Salas
Commissioner

April 17, 2017

Steven M. Ettannani
Senior Advisor, Policy and
Public Affairs

Re: Fiduciary Duty Rule, RIN 1210-AB79

To Whom It May Concern:

Kimberly Goulart
Senior Program Officer,
Office of Financial
Empowerment

The New York City Department of Consumer Affairs (“DCA”) expresses our strong support for the implementation of the U.S. Department of Labor’s (“DOL”) Fiduciary Duty Rule.

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DOL’s Fiduciary Duty Rule will ensure that all financial professionals who offer retirement planning advice or investment products meet a fiduciary standard of good faith and trust. The President’s February 2017 memorandum to the DOL explicitly requests that the agency reexamine its Fiduciary Duty Rule to consider whether its implementation may (1) reduce consumer access to retirement savings information and offerings; (2) disrupt the retirement services industry; or (3) make the retirement savings industry more litigious in nature and augment retirement product prices.

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At DCA, our mission is to protect and enhance the daily economic lives of New Yorkers to create thriving communities. At the center of the fight to reduce income inequality and expand economic opportunity, DCA’s Office of Financial Empowerment (“OFE”) works to support New Yorkers and communities with low incomes in building wealth and improving financial capabilities. OFE is the first local government initiative in the country with the mission to educate, empower and protect New Yorkers and neighborhoods with low incomes so they can build assets and make the most of their financial resources. DCA also enforces the City’s landmark Consumer Protection Law which forbids “deceptive and unconscionable” trade practices in the sale of consumer goods and services.¹ As such, DCA is committed to ensuring that New Yorkers have access to financial counseling, and a marketplace with safe and accessible retirement products that fit the diverse needs of investors with minimal financial barriers to entry and fosters consumer confidence.

nyc.gov/consumers

Access to retirement savings products is more critical now than ever before. In New York City, like many other cities across the country, low- and moderate-income families are struggling financially as they aim to rebuild their savings since the Great Recession. A recent study commissioned by DCA and conducted by the Urban Institute concluded that nearly 58 percent of New Yorkers reported to have inadequate savings and a third of New Yorkers felt “financial unsatisfied.”² A lack of trust and comfort with financial institutions play an important role in this.

DCA Supports the Fiduciary Standard in the DOL’s Rule

The current ERISA regulatory structure does not hold stakeholders accountable.

At the time the Employee Retirement Income Security Act of 1974 (“ERISA”) was drafted, the retirement investment landscape was drastically different. As compared to the 1970s, employer-sponsored plans have a significantly diminished footprint nationally today. A report from the Pew Charitable Trusts finds that only about half of all US workers participate in a workplace retirement plan. Overall, more than 30 million full-time, full-year private-sector workers ages 18 to 64 lack access to an employer-based retirement plan.³ According to the New York City Retirement Security Study Group, only 42 percent of City residents have access

¹ § 20-700 New York City Administrative Code

² Urban Institute, . How Do New Yorkers Perceive Their Financial Security?. New York City, NY: N.p., 2015. Print.

³ The Pew Charitable Trusts, Who’s In, Who’s Out. Susan K. Urahn et al., January 2016.

to either a defined-benefit or a defined-contribution plan.⁴ As a result, an increasing number of Americans are relying on other savings accounts, like Individual Retirement Accounts (“IRAs”), to plan for their retirement.

While this evolving marketplace dynamic has opened the door to more investment product options for consumers, the regulatory scheme around ERISA prior to the proposal of this rule had not adequately adjusted to a marketplace that has less financial security for consumers. The ERISA regulatory structure also does not hold stakeholders accountable for the types of retirement products marketed and sold to consumers. An ill-advised investment decision that may take just a few moments to execute can result in years of financial loss for an individual. Without supervision under the law to ensure the integrity of retirement advice, unrestricted access can increase consumer harm.

DCA supports the fiduciary standard in the DOL’s rule. This standard, which many financial advisors have been able to meet, ensures that consumers can shop for retirement products with confidence. At the very least, consumers should be offered products that are in *their* best interest, as opposed to products that may be more profitable for the advisor to sell or manage, but meet lower “suitability” standards for consumers.

DCA agrees that certain communications between advisors and consumers should not be held to the fiduciary standard, such as matters of investment and retirement education. It would not be appropriate for DCA to formally opine on the question of whether or not the Department’s rule could open the door to increased litigation, but ensuring that certain basic communications with consumers fall outside of the fiduciary standard allows stakeholders to conduct business without unreasonable limitations.

DCA Supports Expedited Implementation of the DOL’s Rule.

Further delay will serve to confuse consumers and enable further instances of consumer harm.

The DOL’s Fiduciary Duty Rule has already been thoroughly examined over the past seven years, including undergoing a re-proposal and numerous revisions responding to thousands of public comments. Modifying or revoking the DOL rule would foster confusion for consumers who anticipate increased protections, and would retain a status quo that leaves average Americans unsure of whether a professional on the other end of the phone or desk is acting in their best interest.

There is little doubt that stakeholders have invested significant resources to comply with the Department’s rule, and it is our understanding, that that exercise has been time and money well spent. Disrupting the status quo of a marketplace should not be negatively construed, particularly when the risk for consumer harm has detrimental long-term consequences.

The finalized rule provides much-needed protection to New Yorkers and families nationwide and DCA urges the Department to act swiftly on this rule and begin phasing in its provisions as soon as possible.

Sincerely,



Lorelei Salas
Commissioner

⁴ The New York City Retirement Security Study Group., An Analysis Of Options To Increase Retirement Security For New York City Private Sector Workers. New York, NY: New York City Comptroller Scott M. Stringer, 2016.