

April 17, 2017

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Department of Labor/Employee Benefits Security Administration
RIN 1210-AB79

Subject: Comments on DOL's Fiduciary Rule

Dear DOL/EBSA Staff,

Thank you for considering my comments on the Fiduciary rule and the related prohibited transaction. My comments are restricted to discussing the IRA law changes and not the ERISA law changes. It is clear that the DOL wanted to create for itself new authority over IRA transactions.

There are some worthwhile changes in the April 2016 changes, but overall the changes are too complex. There is much confusion in the IRA and pension industry. The new rules are too complicated and should be changed to be simpler.

For the reasons set forth below, I believe the DOL under the Trump administration should issue a new regulation for comment by the public and should limit the implementation of the 2016 DOL rules. Actually, Congress should pass a new tax law making the 2016 fiduciary rule moot.

If an IRA transaction does not involve a prohibited transaction, the DOL has no authority with respect to the IRA transaction. Although there may be 15-25% of IRAs with conflicted investments, 75-85% are not conflicted. The fiduciary regulation has resulted in tremendous costs to be incurred for marginal improvements.

The DOL has virtually no legal authority over IRAs which are created by federal income tax law. There is very little employment law involved with IRAs. The DOL's IRA authority derives from its authority over prohibited transactions.

The Obama DOL has over-reached its legal authority. The Obama DOL greatly expanded the definition of who is a fiduciary under common law and existing statutory law. The argument is made that it is for the public's benefit. At what cost? Selling an investment to an IRA has become a fiduciary act even though a seller might never have had any prior business dealing with the IRA trustee or the IRA owner. The DOL sees the future business and the future revenues as the evil conflict which must be guarded against.

The DOL's definition of fiduciary under the regulation is meant to apply to prohibited transaction (PT) situations, but it is unclear if it applies to other situations. Can there be two meanings of fiduciary within the IRA document?

It is not clear to what extent, if any, there was coordination between the DOL and the IRS when the new rules were written. There should have been coordination, but based on the DOL's writings and the lack of IRS' writings there appears to have been very little coordination.

It is well known the IRS has had its political wars with Congress. The IRS for the last 5-15 years has not performed its IRA and pension tasks as well as it should have. It may well be the IRS is willing to relinquish many of its IRA/pension duties to the IRS, but this is a topic where there should be Congressional input. The IRS and the DOL should seek Congressional help. There was no way the Obama DOL was going to ask for Congressional input.

I would suggest the DOL and the IRS should have jointly written the Fiduciary regulation. There should be coordination and transparency with the IRS and the SEC.

The IRS and the DOL should also render joint coordinated guidance on IRA and pension rollovers. The public should have the right to make suggestions to improve the rollover process. Additional public hearings should be held.

Rollovers are extremely important. New laws should be written so rollovers may be properly administered, These rules should come from Congress and should not have come from the highly partisan Obama DOL. Too often, the Obama administration evidenced the belief that individuals were unqualified to make their own rollover decisions.

The IRS should have to explain in writing how the duty to furnish an IRA disclosure statement is impacted by the new fiduciary rules. The IRS has furnished no guidance. The IRS does not follow its own IRA regulation or enforce it. The IRS has furnished no guidance in over 15 years regarding the duty to discuss investment and service relationships in the IRA disclosure statement. The IRS has furnished little if any guidance regarding fees and fee disclosures. Some of the IRS Model IRA forms are extremely out of date as they were written in 2002 and are badly in need of revision.

If these new rules will survive, one of the requirements to be able to use the BICE is that the financial entity is required to maintain a web site. This will generally be extremely expensive. There should be other disclosure methods which would allow a financial entity to use the BICE.

Sincerely,


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