

# PUBLIC SUBMISSION

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Request for Information on the Fiduciary Rule and Prohibited Transaction Exemptions

**Comment On:** EBSA-2017-0004-0001

Fiduciary Rule and Prohibited Transaction Exemptions; Request for Information

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## General Comment

I am an independent RIA and have been in business for 23 years. I have been distressed about a few of the proposed Fiduciary Rules as I am now and have always been a Fiduciary. Being a Fiduciary isn't the issue, but some of the proposed rules are.

1. The ability of clients being able to bring a class action law suit is beyond the sense of reasonableness. Only Congress has the right to write law. This will lead to many advisor that are Fiduciaries to go ahead and leave this field of employment. I am at the point of my career that I don't care to expose my assets to the possibility of being completely wiped out. I believe many others in this profession feel the same way.
2. The sense that one of the criteria that will be used in judging the "rightness" of advise on what to buy seems to be steering toward an all ETF and/or index portfolio because they have an internal management fee that is less than actively managed funds and that is not always true. Another reason of discomfort with this criteria is that many of my clients are very near retirement or in retirement and can not afford to take the elevator down when (and not if) the markets go way down...they don't have the time to recover as they will suffer larger draw downs

as they are also having to withdraw from their qualified account (RMD ). This can lead to a death spiral. I mix in actively managed funds where the managers have done a reasonable job in good markets and an even better job in down markets. My clients prefer to not lose their shirts in market crashes and will accept a smaller return than the markets in good times for that downside protection.

3. I object to including Equity Index Annuities (EIA) that DO NOT include riders that guaranteed income/payout/etc. as these riders are hard for even me to understand. A plain vanilla EIA that has a return based on selected stock markets (without dividend reinvestment) and/or a fixed income bucket that has a minimum guaranteed earning rate along with a minimum overall guarantee return coupled with once earnings are credited, they can't be lost does satisfy many clients that want to earn a return that isn't subject to a loss. My clients know exactly what they are getting and they love these products in the down markets and even now where they are paying much better than CD's on the fixed income side. They do have a place in many portfolios.

The purpose of these Index Annuities (Without any riders)for the most part will be turned into an immediate annuity as some point in the clients life for a guaranteed (by the insurance company) for some period of time up to a joint life scenario. This in turn can allow the client to carry some reasonable amount of equity exposure in their remaining accounts to address the issue of inflation. Many of my peers have written article on this strategy and it makes sense.