

**From:** [Jay Kaplan](#)  
**To:** [FiduciaryRuleExamination - EBSA](#)  
**Subject:** Response to Request for Information RIN 1210-AB82  
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July 20, 2017

Office of Exemption Determinations  
EBSA  
Attention: D-11933  
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Labor Secretary Alexander Acosta  
US Department of Labor  
200 Constitution Ave. NW  
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Senator John Barrasso  
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Washington, DC 20510

Representative Liz Cheney  
416 Cannon House Office Building  
Washington, DC 20515

This email is a response to the Department of Labor's Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions as printed in the Federal Register Volume 82 Number 128 dated Thursday, July 6, 2017.

Recently, the Department of Labor (DOL) put into effect new regulations that have made it impossible for me to purchase taxable or non-taxable municipal bonds in my Roth IRA as I have been doing for over 40 years. These new rules are an outrageous imposition on my investment choices and seem to come from a belief in the DOL that no investor is sophisticated enough to receive Roth IRA investment advice from his broker without being swindled. This paternalistic point of view is devastating my investment plans.

I am a sophisticated, high net worth investor with over 50 years of experience investing in municipal bonds of all types. The kinds of municipal bonds I purchase have proven to be

100% safe and stable - much more so than the corporate bonds I have bought from time to time. I have never lost a penny making these municipal bond investments because, in fact, they are far safer than corporate bonds where I am forced to rely on historically incompetent bond rating companies. The financial meltdown of 2008 showed bond rating companies to be ineffective in protecting investors. I do not want to make investments that rely on bond rating companies' evaluations again.

The new DOL rules block me from buying municipal bonds in my Roth IRA directly from an initial underwriting or even from my broker's own inventory. The DOL apparently thinks that merely by bringing the offering to my attention, my broker/underwriter becomes a fiduciary no matter what kind of disclosure my broker makes, so he is now blocked from selling his underwritings or his inventory to my Roth IRA.

*Surely someone in the new Administration can bring a practical eye to this silliness. If I am capable of making investment decisions for my personal accounts, what makes my decisions for my Roth IRA suddenly so in need of protection?*

Under the current DOL rules, I can't buy new underwritings even if the prices I pay are the lowest available to anyone – including to huge banks and institutional buyers! The only way I am permitted to buy the municipal bonds I want in my Roth IRA is to allow the bonds to get sold at low prices to some third party who then marks them up to a higher price and offers them in the secondary market. *After this markup, I can buy the same bonds I could have bought for less but now I end up paying extra commissions AND an unacceptable premium to the third party that the DOL has allowed to get between me and the best price available! If the DOL is trying to protect investors, why would it pass rules that raise my cost of buying bonds?*

Barring me from buying bonds in my Roth directly from the underwriters has yet another cost that I should not have to bear - it is the information cost. Every underwriter knows the most important details of the underlying credit of its issues. No third party can possibly know the details of every municipal bond on the market. *Why would the DOL force me to buy bonds, not from the underwriters with the facts, but from the third parties that know the least about a particular bond?*

Always, I have bought municipal bonds directly from the underwriters at the time the bonds were issued. In this way, I am able to talk with the very people doing the underwriting and have a chance to read the related offering materials. I receive the best information AND the best pricing. *The new DOL rules raise my cost and lower my information. This is insane!*

The plain facts are that I am not relying on my broker as a fiduciary but rather as a source of information. Moreover, I don't know why I can't make a decision for myself on whether I even want my broker to act as a fiduciary. Surely the DOL cannot be so arrogant that it thinks it knows more about my best interest than I do!

*As a sophisticated investor, I object to a rule that reduces my investment choices, raises my costs and forces me into investments that I am stone cold certain are less safe than those I have been buying for over 50 years.* Thanks to these new DOL rules, I am unable to invest in the very bonds that, in my view, have the highest yields combined with the lowest risk.

I understand that the DOL is trying to create transparency and shine some light on hidden fees

and overcharges that some brokers might inflict on unsophisticated investors. That is an admirable goal as there is nothing wrong with full and fair disclosure. But, the new DOL rules go way past disclosure and block my ability to invest my own money. This is wrong.

The DOL must add exceptions for experienced investors. It must add exceptions for clearly-disclosed selling. Until the new rules are amended, the DOL has destroyed the kind of financial planning I want for myself and, I'm sure, many other sophisticated investors want for themselves.

With its new rules, the DOL has terrorized the brokerage community into refusing to use common sense and sell bonds to investors accustomed to making rational and well-informed decisions. I am not speaking for small or unsophisticated investors. I am speaking for myself and others able to understand the market and protect themselves. I want to be able to buy municipal bonds in my Roth IRA directly from the underwriters at the time of the new issue and I want to be able to buy any bond at any time from their inventory. I do not want to have to pay fees to third party profit hunters who probably know less about a particular bond than I do. **The DOL rules must be amended so, at the very least, high net worth individuals or experienced investors can make their own investment choices!**

I am available to discuss this with anyone at the Department of Labor. I am not affiliated with any investment house or bank and am currently retired.

Please confirm receipt of this correspondence.

Thank you for your attention to this most important matter.

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