

September 12, 2017

The Honorable Alexander Acosta  
Secretary, Department of Labor  
200 Constitution Avenue, N.W.  
Room S-2018  
Washington, D.C. 20210

Dear Secretary Acosta:

I am writing about the Department's fiduciary regulation. The recently proposed delay in the application of the full rule gives the Department time to reexamine this counterproductive regulation, which hurts the very people it was intended to help, especially the working families that our organization seeks to protect.

The Hispanic Leadership Fund is a non-partisan advocacy organization dedicated to strengthening working families by promoting common-sense public policy solutions that foster individual liberty, opportunity, and prosperity.

The fiduciary rule is, unfortunately, a prime example of government overreach that assumes that Americans are incapable of discerning what information they use in making financial decisions. For example, the rule finds that individuals and small businesses are not sophisticated enough to distinguish an investment company's promotion of its own investment products from impartial investment advice. The fear, presumably, is that an investment company will promote its own products and the customer will believe that they are receiving impartial advice about—not only that company's products—but also its competitors' products. This strange assumption underlies the unprecedented step of prohibiting investment companies from promoting their own investment products.

In addition, the rule creates the basis for countless new lawsuits, some based on the portion of the rule yet to take effect and some authorized today. The rule unleashes an army of plaintiffs' lawyers to sue advisors whenever the market goes down, based on vague rules that courts can interpret in many ways. This threat of litigation will further discourage advisors from serving Americans who are not wealthy. The reality is that many advisors will not want to assume a huge litigation risk to help families who cannot afford to pay enough to cover the cost of that risk.

These adverse impacts are not theoretical. They are already happening, despite the rule only being in effect since June:

- In a July 2017 national survey of 600 financial professionals, Harper Polling found that 75% of the professionals whose "typical clients have starting assets under \$25,000

report that they will take on fewer small accounts due to increased compliance costs and legal risks.”

- An April 2017 survey of its financial professional members by the National Association of Insurance and Financial Advisors made a very similar finding: nearly 75% of financial professionals have experienced or expect to experience an increase in the minimum account balances for the clients they serve.
- The American Action Forum quantified this effect nationally, finding that “up to 7 million Individual Retirement Accounts would fail to qualify for an advisory account due to the balance too low to be sustainable for the advisor. In the shorter term, we found that the fiduciary rule, as written, will result in over \$1500 of duplicative fees charged per household retirement account.” On an ongoing basis, they estimate that the annual fees solely attributable to the fiduciary rule will be \$816 per account and over \$46 billion in the aggregate.
- A July 2017 survey by the Insured Retirement Institute also found that many working families will be “orphaned,” i.e., left without access to any advisor to help them with retirement issues. The survey found that “approximately 155,000 . . . clients have already been ‘orphaned.’”
- A non-commissioned report by CoreData Research UK, based on an October 2016 survey of 552 U.S. financial advisors, found that 39% of advisors believe the cost of personal financial advice will become too expensive for most investors.
- A.T. Kearney, a management consultant recommended that broker/dealers should “evaluate account thresholds to continue to serve (for example, accounts greater than \$200,000).” Kearney believes that by 2020, broker-dealer firms will collectively stop serving the majority of the \$400 billion currently held in low-balance retirement accounts.

This data is disturbing. The victims of this overregulation are hard-working Americans, who will be prevented from receiving information that is highly relevant for their financial well-being. A regulation that in effect cuts less affluent individuals and families from receiving all possible advice and information is clearly the wrong answer. We ask for your help in putting an end to this harmful rule.

Sincerely,



Mario H. López

*President*