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Edward Hugler
Department of Labor
200 Constitution Ave NW
Washington DC 20210

Dear Mr. Hugler:

The Department of Labor's "Rush to Regulate" failed to recognize the meaning, intent, practicality, and utility of one of the finest regulations ever written and passed by Congress. The extent and thought put into ERISA appears to be unequaled and without precedence. Part of ERISA's beauty is that it is simple yet complete. Its cornerstones are logic, fairness, and procedural prudence. The final rule from the Department of Labor, scheduled to begin to be implemented in April, falls far from the stature, intent, and the practicality of ERISA.

ERISA was initiated in 1975, when IRAs were first getting started and 401Ks had not yet come along. ERISA was structured to help govern *Defined Benefit Plans*, not 401Ks, and was structured even less for individual plans, such as IRAs. Defined benefit plans are governed and judged by the ERISA regulations themselves, which include the implementation of "prudent procedures" in all aspects of its dealings. ERISA does not choose the investments or the compensation - fiduciaries do, and they are to be judged by federal law. That has been the standard – prudence and accountability.

The "Rush to Regulate" has ignored the differences and needs for a well-thought-out, structured regulation for individual accounts. The DOL Fiduciary Rule does not meet the needs of the individual investor. It will lead to increased costs, fewer brokers/advisers, less services being offered, and most of all, a lack of achievement of the individual's needs, goals, guidelines, and objectives. Additionally, the new regulation will create large amounts of litigation in various states which will be adjudicated by local judges and class actions.

This regulation is being touted as one to protect the assets of retirees. Has anyone considered that those who need it the most will be ignored and not receive the services received by those with large assets? Will it be worth it for brokers to spend substantial time on clients with less assets without reasonable compensation? The investing public will have less brokers and fewer services. Has anyone thought about the potential disruption of the markets by robo-managers of accounts? Does anyone remember crash issues from automated systems? What about the effect of all those robos with the same objectives feeding the downdraft in markets and creating irrational volatility up and down? How would that serve the investing public?

As it is, there are approximately 600,000 brokers licensed in this country to advise, purchase, and sell securities for those interested in investing. They are governed by several acts, such as the **Securities Exchange Act of 1933** and **The Securities Exchange Act of 1934**; many are also governed by the **Investment Advisers Act of 1940**. These acts have been reliable guidelines for directing the brokers and advisers in regards to their investment clients. The brokers and advisers are licensed, educated, and supervised in accordance with these rules. Brokerage relationship recommendations are guided by suitability and fairness, whereas discretionary relationships are guided by fiduciary duty. Where ERISA accounts are involved, their laws apply. However, a very limited number of brokers/advisers deal with and understand ERISA. They have to work with trustees who hire, fire, and monitor them. They must engage in "prudent procedures." If they become or are a "named fiduciary," they will be held accountable to a standard to which they do not know the detail, the nuance, or the application to an individual owner as opposed to a trustee. Where is the guidance, education, and accountability on behalf of the investors?

The "Rush to Regulate" ignores the fact that most brokers do not understand ERISA well enough to either live up to its standards or reasonably be expected to be held accountable for it. The advisers and brokers dealing with ERISA accounts (including IRAs, if they are held to that standard) must be thoroughly educated as to the fiduciary duties, prohibited transactions, etc. intrinsic to these regulations. They then must be licensed and monitored just the same as the SEC and FINRA monitor them now. The steps of education, licensing, and enforcement should be handled by the DOL, the SEC, and/or FINRA. The "Rush to Regulate" does not take action to educate, license, or supervise the brokers or advisers who oversee the very precious retirement funds the regulators claim to protect.

Before anything else occurs, a "blue ribbon" committee equal to that which wrote ERISA must come up with a meaningful, well-thought-out set of regulations geared towards Individual Retirement Plans. These regulations must incorporate all of the fiduciary standards of conduct, guidance, and definitions equivalent to that of ERISA.

"Procedural prudence" and the implementation of the same will be of paramount importance to making a new law effective. It needs to be reflective of ERISA, but with the adjustment of having an owner instead of a trustee or a fiduciary. It should, as is ERISA, be governed by a written document including level of risk, liquidity needs, rebalancing points, etc. There is no need for the Best Interest Contract or the government to choose investments, dictate allowable commissions, etc. As fiduciaries, they will be completely responsible for acting in the "best interest" of the clients, including recommending they pay reasonable commissions to those acting on the client's behalf in order to evaluate the needs of the client and implement the same. If they are not acting as fiduciaries, they will still have to be accountable as to the fairness of fees and the costs of the investment. It would be incumbent upon the broker to make a suitable determination consistent with the client's written goals, guidelines, and objectives, and the broker would be held accountable for the prudence of his or her recommendation.

Prudent procedures would also dictate that when leaving one person/entity to be an ongoing fiduciary, that he or she would have someone at arm's length who would be accountable to the fund, monitoring and evaluating the same.

The bottom line:

1. Rewrite of ERISA geared towards establishing a well-written plan for individually owned retirement accounts as well as all defined contribution plans. This must be tailored to instilling prudence and accountability consistent with the spirit and objectives of ERISA.
2. Establish the following:
    a. A governing body to accomplish regulatory oversight
    b. Education for brokers and advisers

    c. Licensing for brokers and advisers
    d. Supervisory guidelines to follow
    e. Maintenance of full jurisdiction of federal law
3. Terminate regulation due to take effect in April 2017

In addition to the aforementioned analysis of the Department of Labor Fiduciary Rule, the practicality of issues during various forms of litigation endangers the financial security of the institutions providing services to these retirement structures. Lack of training, licensing, and the formation of a rational set of regulations will create a substantial financial danger to all. The first question a claimant's attorney will ask is "What training and licensing did you obtain in order to perform these services?" The second question will be "What type of supervision did you receive?" Then come the class action lawsuits. What is needed now is an "Enhanced Duty of Care" by the government – that is what is known as "Prudence!"

Regards,

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