From: Mirabito, David
To: ryan.rusbuldt@mail.house.gov; zach.howell@mail.house.gov; halie.northrop@mail.house.gov; rocint@schumer.senate.gov; anika_verma@gillibrand.senate.gov; CHAIRMANOFFICE; Benson, Wendy; BarclaW@nyassembly.gov; ritchie@nysenate.gov
Subject: FW: Dept. of Labor regulations
Date: Monday, July 24, 2017 11:45:44 AM

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From: Mirabito, David
Sent: Monday, July 24, 2017 10:34 AM
To: Crandall, Roger <[redacted]>; Flemming, Marikay(288) <[redacted]>; Krueger Jr James [redacted]>; Krueger, Bernadette <[redacted]>; Bonisteel, Bryan(288) <[redacted]>; Sprow, Terrence(288) <[redacted]>; Voytko, Timothy <[redacted]>; Cote, Richard(288) <[redacted]>; Tom, Eric <[redacted]>; 'Charlotte Crandall' [redacted]>
Subject: FW: Dept. of Labor regulations

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From: Mirabito, David
Sent: Friday, July 21, 2017 12:00 PM
To: Terrazzino, Samuel <[redacted]>; Vaccaro, John [redacted]>; Weiss, Alison <[redacted]>
Subject: Dept. of Labor regulations

I am requesting that you reconsider any proposed Dept. of Labor regulations, including all aspects of the fiduciary rules.

My reasons are:

1. Many people will be left behind and without financial advisors to work with them. Already I have received a phone call from the mother of a 28 year old who has been informed by his broker-dealer to contact the 800# in the future. He has $11,000.00 in his Roth IRA. I presume this was not the intent of the fiduciary rule, that people who may need us the most to make smart decisions, are going to have no or fewer professionals to speak with.
2. Broker-dealers have spent extraordinary amounts of money to comply with expected regulation. My broker-dealer has created a form that asks the exact same questions any good financial advisor would ask before he or she recommends a rollover or a transfer of assets. The form requires me to transcribe the answers I've already collected into a less useful (to me) form so as to satisfy the proposed regulations.
3. In addition, it would be nice to have a de minimis exception. I now have to complete the same less useful form for $700.00 (which I completed last week) as for $70,000.00 or $700,000.00. The fiduciary rule will influence people to save less in retirement plans and perhaps not save more money outside of retirement plans. Because of the 10% early withdrawal penalty, people are less likely to surrender retirement accounts early. But the fiduciary rule incentivizes advisors to recommend more money outside of

retirement plans which means people can access at less cost which can mean people may retire with less money

4. Many broker-dealers have spent weeks deciding what vendors they want to have selling agreements with. This is wonderful idea in theory, and much more challenging in practice. In recently attempting to complete a change of broker-dealer form, I learned that I could not accept certain assets he already owned. This forces the investor to either leave that investment where it is or dispose of it and possibly incur a taxable gain. How does this help the client?
5. There is a class of people who will benefit from the implementation of the fiduciary rule: trial lawyers. This does not necessarily mean that middle Americans will receive better advice and service. No less an authority than Don Phillips, director of research at Morningstar, has said exactly that. When Vanguard, the giant mutual fund family, can be sued for charging two basis points too much for a plan (that's $.02 for every $100.00 or $2.00 for every $10,000.00), what will a smaller broker-dealer have to spend to defend themselves? I'm sure Vanguard can use that money to train advisors and perhaps earn a profit.
6. Why is clients' money outside of an IRA less significant money inside of an IRA or Qualified plan? Given the same net worth, the clients' non-retirement money is far more important than their retirement money because they usually keep a far greater percentage of it.
7. Market distortion. DOL rules will scare advisors and entice investors to buy index funds and ETFs that will purchase and sell the market, or some part of the market indiscrimately, without regard to price earnings ratio and diversification, among other investment considerations. I am not an opponent of index funds and ETFs, they are proven to have saved billions of dollars in expenses and of course to match market performance of a broad market or a particular segment of the market. I am not advocating for high-cost MFs, ETFs, and other investments that underperform the broad markets and do not provide any particular redeeming value. What I am concerned about is that advisors will no longer invest their clients in solid investments with terrific track records and default to passive funds (indexes and ETFs) simply because they are cheaper. Cheaper is not always better.

   We all know that this year's(or this decade's) best performing Mutual Fund or ETF may not be next year's or next decade's best performing Mutual Fund or ETF. The New England Patriots don't win the Super Bowl every year. Consistently excellent usually outperforms a see saw ride between hero to zero and back.

   Most importantly, in the distributions phase of a retirement account, one of the most important virtues is to reduce volatility. Many studies, including that of American Funds and academics, illustrate this point. Index funds and ETFs do not automatically reduce volatility and I fear that, by people investing heavily in indexes and ETFs that do not reduce volatility, that you will inadvertently encourage people to run out of money sooner, and exacerbate the very problem you seek to prevent.

8. By virtue of this rule, you are stigmatizing Life insurance and annuities. There are

fewer employers of all sizes who provide a defined benefit to their employees. Annuities, used properly, and with the appropriate and transparent assumptions, can fill the void left by the absence of defined benefit plans. To provide pension like income, annuities can take many forms, deferred, immediate or deferred income. These may become more important than ever in the next 20-30 years. Old age Social Security benefits can be thought of as the largest immediate annuity most people will have in their lifetimes. As one chief compliance officer said to me: " We all know why we're here, because too many annuities with high commissions and high expense have been sold." I could not agree more with this statement, but if that is truly the problem, a much simpler solution might be to reduce the compensation an advisor can receive on such annuities, or spread out compensation over 2-3 years

9. Other observations: It probably will require more signatures and forms to start an IRA than it does to purchase a new home and take out a mortgage.

Every professional in our business is aware and is reminded every day that there is a serious retirement crisis in the U.S. We should be making it easier, not harder, for people to get advice and accumulate wealth. It is already happening, advisors and retirement providers will hesitate or outright refuse to start small accounts for younger and less affluent people who want to start an IRA, a Roth IRA or a 529 account. Why? Mountains of paperwork and fear of legal reprisal. The first-time investor who wants to dollar cost average (buy a steady amount each month) will be adversely affected.

Contrary to what some Senators and Congressmen believe, very few insurance agents, financial advisors have ill intent towards their clients.

I am very much in favor of fiduciary behavior. I believe that any person who handles money and financial instruments for any other person should unwaveringly consider the client's interests ahead to his own. I very much want our industry to act like and be a professional. I believe, however, that the regulations, as they stand, will harm, not help consumers. Wealthy people will find a way to be financially protected, no matter what. Middle America will have to compete for attention and advice, and most importantly implementation.

Thank you,

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