

SECRETARY OF LABOR
WASHINGTON, D.C. 20210

APR - 6 2016

Dear Member of Congress,

Today we published the final conflict of interest rule, requiring retirement advisers to abide by a “fiduciary” standard – putting their clients’ best interest first.

Thank you for your expertise and thoughtful feedback during what has been a very thorough, open and transparent process. When I became Secretary of the Department of Labor (the Department), I committed to you that we would make sure we got the process right. During the nearly six months between the proposal’s issuance and the close of the comment period – which included an extension of the initial comment period – we held over 100 meetings with stakeholders and met with many of you. Additionally, we had four days of public hearings for which we published transcripts and provided an additional opportunity for comment. We also received over 300,000 petitions, and over 3,000 written comments.

Today, I am pleased to tell you that we are publishing a final regulatory package that includes new definitions for who must meet fiduciary standards, exemptions from the fiduciary requirements when certain conditions are met, and an extensive Regulatory Impact Analysis, all of which incorporate many changes and accommodations intended to clarify, streamline and simplify the proposal. Many of these changes address issues that were raised by you or your colleagues, and I appreciated your constructive engagement and well-informed input in this process. And most importantly, the final regulation continues to adhere to the ‘North Star’ of an enforceable best interest standard: ensuring that your constituents have the opportunity for a secure and dignified retirement by protecting their hard-earned savings.

Many of you raised important concerns that we addressed in the final rule. I would like to share with you some of these key examples.

Many of you requested that the Best Interest Contract Exemption’s contract execution provisions be streamlined. In the final exemption we:

- Do not require the contract to be executed prior to advisers’ recommendations.
- Permit reliance on a negative consent process for existing contract holders.
- Simplify execution of the contract by requiring the financial institution to execute the contract rather than also requiring each individual adviser to sign.
- Modify the contract requirement so that the contract doesn't need to be re-signed for each interaction with a different employee of the same firm.
- Eliminate the contract requirement in the Employee Retirement Income Security Act (ERISA) plan context.
- Specifically allow for the required contract terms to be incorporated in account-opening documents.

A number of you requested additional flexibility to ensure that advisers can continue to provide investment education. In the final rule we:

- Clarify and describe the types of information and activities that constitute non-fiduciary investment education – including plan information and general financial, investment, and retirement information.
- Allow asset allocation models and interactive investment materials to identify specific investment alternatives under an ERISA-covered plan if certain conditions are met.

Some of you asked that the Department ensure that companies are allowed to continue to sell their own products and certain other products. In the final exemptions we:

- Clarify application of the best interest standard to financial institutions that limit investment recommendations to proprietary products and/or products providing them with third-party payments.
- Make clear that advisers may recommend insurance products and revised the disclosure provisions to better reflect how insurance products are sold.
- Make clear that the lowest cost product is not necessarily the best product.

Many of you requested that the implementation of the final rule be flexible and provide a longer period of time for compliance. In the final rule we:

- Extend the first phase of implementation to one year after publication of the final rule.
- Adopt a “phased” implementation approach for the Best Interest Contract Exemption and the Principal Transaction Exemption so that firms will have more time to come into full compliance.
- Make clear that we will provide compliance assistance to firms that have implementation questions to the greatest extent possible.

Many of you also provided helpful feedback on the disclosure requirements in the Best Interest Contract Exemption. In response to that feedback, in the final exemption we:

- Eliminate most of the proposed data collection requirements.
- Eliminate the one, five, and ten year projection requirements of the proposed point of sale disclosure requirement.
- Eliminate the annual disclosure requirements.
- Require the most detailed disclosures be made available only upon request.
- Provide a mechanism to correct good faith violations of the disclosure conditions without losing the benefit of the exemption.

Finally, in response to your feedback about the scope and nature of the Best Interest Contract Exemption, in the final exemption we:

- Expand use of the exemption to cover advice to small plan sponsors.

- Eliminate the asset list so all asset classes are covered by the Best Interest Contract Exemption.
- Streamline compliance for fiduciaries that receive a level fee for advice or asset management.

Thank you for working so closely with us during this process. This representative list shows a number of changes that were made to clarify, streamline and simplify the final rule. As I have said, we listened, and we learned from the many stakeholder interactions we had throughout this process.

Although I know there are many strong feelings on this issue, I genuinely appreciate the constructive dialogue I have had with you. We want that dialogue to continue and my staff and I would be happy to come up and meet with you or your staff to discuss the substance of the final rule and exemptions and answer any questions or concerns you may have.

As we publish this final rule and exemptions, it is important to remember what President Obama said in announcing this effort in February 2015: “It’s a very simple principle: You want to give financial advice, you’ve got to put your client’s interests first.” I could not agree more. I continue to strongly believe this is one of the most important actions we can take to help ensure Americans are able to retire with dignity after a lifetime of hard work.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom E. Perez', written in a cursive style.

THOMAS E. PEREZ