

Advocacy Comments on EBSA Proposed Fiduciary Rule

On July 17, 2015, the Office of Advocacy (Advocacy) submitted a comment letter to the Employee Benefits Security Administration (EBSA) in response to the agency's April 14, 2015 proposed rule, Definition of the Term "Fiduciary"; Conflict of Interest Rule--Retirement Investment Advice. The proposed rule would expand the definition of "fiduciary" of an employee benefit plan by providing investment advice to a plan, its participants, or beneficiaries. The proposal would extend the fiduciary standard of care to all advisers of workplace retirement plans and IRAs. The proposed rule would require these advisers to disclose any potential conflicts of interests and the proposal would again prohibit advisers from engaging in certain transactions.

- Advocacy thanks EBSA staff for participating in our small business employee benefits roundtable to discuss this rulemaking with small business stakeholders.
- Based on input from small business owners and representatives, Advocacy is concerned that the Initial Regulatory Flexibility Analysis (IRFA) contained in the proposed rule lacks essential information required under the Regulatory Flexibility Act (RFA).
- The IRFA does not adequately estimate the number of small entities that would be affected and does not accurately estimate the costs of the proposal. Primarily, EBSA does not clearly apply what constitutes a small business in its analysis for this rulemaking. As the proposal contains an IRFA with inadequate cost and small business estimates, the public will not be fully informed as to the possible impact of the proposed rule on small entities. Moreover, because the estimates provided by the IRFA appear to be flawed, it is uncertain how EBSA could accurately evaluate alternatives to the proposed rule which would reduce the burdens on small businesses.
- Advocacy recommends that the EBSA publish for public comment a Supplemental IRFA before proceeding with this rulemaking. The Supplemental IRFA should provide more accurate estimates of the number of small entities impacted by proposal and of the costs of the proposal. Advocacy also encourages EBSA to consider ways to decrease the potential small business burdens of the proposed rule, including expanding the scope of exemptions contained in the proposal.

For more information, as well as a complete copy of Advocacy's letter to the EBSA, please visit Advocacy's website at <http://www.sba.gov/advocacy/816> or contact Assistant Chief Counsel Dillon Taylor by email at dillon.taylor@sba.gov or by telephone at 202-401-9787.