

January 13, 2012

Mr. Joseph S. Piacentini  
Director  
The Office of Policy and Research  
Employee Benefits Security Administration  
U.S. Department of Labor – Room N-5718  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Attention: Definition of Fiduciary RIA Data Request

Dear Mr. Piacentini:

The Institute is pleased the Department of Labor will repropose any amendments to its 1975 fiduciary rule to provide additional opportunity for public comment before adopting any changes to the regulation. We also are glad the Department will develop and publish a regulatory impact analysis that will assess the impact of any changes on both ERISA plans and IRAs. We previously provided you with input on the economic analyses the Department has offered for the original proposal.

Your December 15 letter asks for comprehensive information about individual IRA accounts and their owners, including detailed data on all the investments held in a particular IRA and their performance over time; the characteristics and transaction history of the IRA account and whether transactions resulted from specific recommendations and whether the recommendations were solicited; and demographics of the IRA holder including his or her risk tolerance, financial literacy and investment strategy preferences.<sup>1</sup>

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<sup>1</sup> The December 15 letter asks among other things for detailed information showing: each investment held in an individual IRA account, its rate of return over 40 quarters and its class, performance, strategy, risk and fees; detailed information on flows into and transactions involving the investment, including price, commissions and loads, markups/downs of principal transactions and the references against which they were measured, and whether transactions were initiated by the investor or adviser; the type of IRA account, distribution channel through which the individual opened the account, identification and attributes of the adviser, and compensation arrangements of the registered rep and financial institution, including separate/variable compensation by each security and transaction; the advice rendered to the account including specific recommendations and whether they were solicited; and demographic information about the account holder, including economic attributes, financial literacy, investment strategy or preferences and length of time with the financial firm and adviser.

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The type of comprehensive individual account IRA data the letter calls for does not reside with the Institute and its members. Households owning mutual funds outside of workplace retirement plans (a group that includes most IRA investors) purchase their mutual funds through a variety of sources. Institute household survey research finds that 80 percent of households that owned mutual funds outside a workplace retirement plan held mutual funds purchased through a professional financial adviser.<sup>2</sup> Professional financial advisers include full-service brokerage firms, independent financial planners, bank and savings institution representatives, insurance agents, and accountants. In many cases, the mutual fund investments are held in omnibus accounts<sup>3</sup> and the entire relationship and all contacts with the investor are maintained through the financial intermediary, not the mutual fund company. Even in cases where an investor purchases mutual funds for an IRA account directly from a fund company, rather than through a professional financial adviser, the fund company would not know what the decision-making process of the investor was or have the type of investor demographic information the letter calls for. Thus, any information about IRA accounts the mutual fund industry might have would not be responsive to EBSA's stated goal for the data request – determining what impact, if any, conflicts of interest faced by brokers or others who advise IRAs have on IRA investors.

Although we do not have the particular information called for in your letter, the Institute conducts regular research on the 401(k) and IRA markets, which is available on our website. While I believe you are familiar with our research, we would be pleased to meet with you to describe the papers, studies and data that we have and discuss whether it might be useful in informing your economic analysis for the reproposal.

Finally, should the Department be able to obtain the particular data spelled out in the December 15 letter from other sources, we caution you against misinterpreting the data. The Department apparently hopes through statistical analyses of individual IRA account data to test whether potential conflicts of interest faced by brokers or financial advisers affect the quality of the services that they provide to their clients.

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<sup>2</sup> Among mutual fund-owning households in May 2011, 31 percent owned funds solely outside of employer-sponsored retirement plans, and 37 percent had funds both inside and outside these plans. Among these households owning mutual funds outside such plans, 80 percent owned funds purchased from a professional financial adviser. See Figure 8 in Bogdan, Holden, and Schrass, "Characteristics of Mutual Fund Investors, 2011," *ICI Research Perspective* 17, No. 6 (October 2011), available at [www.ici.org/pdf/per17-06.pdf](http://www.ici.org/pdf/per17-06.pdf)

<sup>3</sup> An omnibus account is a master account representing the subaccounts of multiple investors that may include a mix of investor account types. An omnibus account is opened on the records of the mutual fund in the name of the intermediary and the fund complex typically does not have any information identifying or otherwise relating to the beneficial owners of the subaccounts.

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There are limitations in using this kind of statistical analysis. It is not clear how a researcher would measure the extent to which a broker or financial adviser did or did not act in the interests of clients. For example, in doing any such analysis, it is not possible to judge the quality of advice or assistance to an IRA holder by looking only at the investments in the IRA account without also knowing what other investments the IRA owner, as an individual or a household, might hold. IRA investments might seem aggressive or undiversified when viewed alone but be reasonable and appropriate in the context of the entire portfolio of the individual or household. Furthermore, the interactions between financial professionals and their clients are complex, and clients do not always follow recommendations they receive. Indeed, among mutual fund-owning households with ongoing advisory relationships with a financial adviser, 38 percent indicated that the adviser takes the lead in all decisions; 34 percent indicated the adviser and investor make decisions together; and 28 percent indicated that the investor takes the lead in decisionmaking.<sup>4</sup> Disentangling these complex interactions and their effects on the investors' returns is beyond the scope of statistical analysis.

We recognize the Department may want to amend a 35 year-old rule. Our focus is to help assure any revisions "get it right." We would be happy to discuss any of the matters set out in this response at your convenience. Please do not hesitate to call me.

Sincerely,



Mary S. Podesta  
Senior Counsel – Pension Regulation

cc: The Honorable Phyllis C. Borzi  
Michael L. Davis  
Alan D. Lebowitz

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<sup>4</sup>The Investment Company Institute undertook a telephone survey in 2006 to examine mutual fund shareholders' use of ongoing, professional investment advice. For information on the survey and other survey results, see Leonard-Chambers and Bogdan, "Why Do Mutual Fund Investors Use Professional Financial Advisers?" *Investment Company Institute Research Fundamentals* 16, No. 1 (April 2007), available at [www.ici.org/pdf/fm-v16n1.pdf](http://www.ici.org/pdf/fm-v16n1.pdf).