Thank you. I am Sean Collins, Senior Director for Industry and Financial Analysis at the Investment Company Institute, a leading, global trade association representing mutual funds and other regulated funds in the United States and jurisdictions around the world. ICI appreciates the opportunity to testify on this important rulemaking.

The Institute agrees with the principle that providers of financial advice should act in their clients' best interests. Consequently, our comments on the Department's proposal focused on its details. As David Blass, ICI's general counsel, indicated yesterday, we have strong concerns that the proposal, if implemented, would result in a loss of investment advice for many IRA investors, especially those with low- to moderate-incomes.

We are also deeply concerned about the Department's Regulatory Impact Analysis. The Impact Analysis must justify the proposed changes. Regrettably, it fails to meet this test and, indeed, is fundamentally flawed.

The Impact Analysis argues that rule proposal might deliver benefits to IRA investors of more than $44 billion over the next ten years, or about $4 billion per year. Against that, the Impact Analysis estimates the costs of complying with the rule at $2.4 to $5.7 billion.

The Analysis bases this claim, and its claim of [QUOTE] "[a] substantial failure of the market for investment advice," on its review of a "wide body of evidence." The central message of this evidence is that brokers provide biased advice, allegedly leading clients to purchase investments that are expensive or that underperform.

We have examined the Impact Analysis and the academic studies it cites. Unfortunately, they simply do not support the Department's claims of huge benefits. In summary:

- First, neither the Impact Analysis nor the studies it cites measure the key factor: is an investor's performance different when the adviser is a fiduciary versus when the adviser is not?

- Second, the studies that the Analysis cites do not reflect current market conditions.

- Third, the Impact Analysis misapplies the numerical results of a key study, leading to a vast overstatement of potential benefits.

- Fourth, the Analysis fails to consider readily available data that contradict its claims about broker-sold funds.

- And fifth, the Impact Analysis fails to consider that some investors, particularly those of modest means, may face increased costs if the proposed rule forces them to migrate to fee-based accounts—or to go without financial advice altogether.

Correcting for these problems, we find that the Impact Analysis's claimed benefits of $44 billion over 10 years is totally unfounded. Indeed, even rather basic calculations, based on plausible alternative assumptions, suggest that the rule, if adopted, could cost investors $109 billion in lost returns and added fees over 10 years.

Let me explain.

First, the Impact Analysis, and the studies it cites, do not—indeed, cannot—measure the key question: how do investors fare when using brokers versus when using fiduciary advisers?

No data are available that address that question directly. Consequently, the Impact Analysis simply cannot use these studies to estimate potential benefits or costs of the proposed rule.

Second, the Impact Analysis cites academic studies indicating that broker-sold funds underperform. But these studies do not reflect current market conditions. They use data on broker-sold funds stretching back to the early 1990s and ending generally by 2004.

Since then, however, the market for funds and investment advice has changed fundamentally. In 2000, only half of the funds with a front-end load share class also offered a no-load share class. By 2010, nine in 10 did so, effectively eliminating "market segmentation." Funds sold by brokers and funds traditionally described as "direct-sold" now compete head-on.

Had the Impact Analysis used more recent, publicly available data, it would have found that investors in front-end load funds bought shares that *outperformed*, not underperformed. From 2007 to 2013, on a sales-weighted basis, front-end load share classes outperformed their Morningstar category averages by about ¼ percent (25 basis points).

Third, the Impact Analysis misapplies the results of a study—by Christoffersen, Evans and Musto—that forms the linchpin of its benefits analysis. Taking that study at face value, we believe that a correct application using recent data would reduce the claimed benefits of the rule to about $200 million per year, at most. That's far less than the $4.4 billion per year claimed by the Impact Analysis and is within the range of the Impact Analysis's own estimate of the costs to implement the rule.

Fourth, the Impact Analysis ignored data that contradict its key assertions. Take its claim that brokers do not recommend less expensive funds. In fact, as detailed in ICI's comment letter, investors in front-end load funds, like other investors, gravitate to lower-cost funds.

In 2014, for domestic equity funds, the average expense ratio of all funds offered for sale was 1.29 percent. For all such no-load funds, the expense ratio was 0.97 percent. Investors in domestic equity front-end load funds paid even less, 0.93 percent.

Finally, the Impact Analysis suffers from two major errors of omission.

First, it fails to assess the impact on investors who shift to a fee-based model due to the rule. As ICI and many others have detailed, the Best Interest Contract exemption is unworkable. Effectively, investors who want advice will no longer have the option of even considering brokers.

Many may migrate toward fee-based accounts. These investors, especially low- to moderate-income investors with lower balances, may end up paying much higher overall fees. Cerulli indicates that accounts with fee-based advisers cost 1.10 percent of assets, and fees can be considerably higher for balances less than $100,000. Fee-based advisers, like brokers, provide valuable services and deserve to be compensated. But investors with smaller balances may be better served and may pay lower fees under a broker-model.

The Impact Analysis also fails to measure the costs of investors becoming disenfranchised from the advice market. The Analysis assumes that the rule proposal, if adopted, will drive down brokers' commissions significantly, but that brokers will continue to provide the same services to retirement investors. That is unrealistic.

Some broker clients will no doubt migrate to fee-based accounts, but others are likely to be shut out of the advice market entirely. ICI data indicate that 75 percent of traditional IRA investors have balances of less than $100,000, but many fee-based advisers require minimum balances greater than that. Thus, investors with smaller accounts could end up with no access to advice.

The Impact Analysis acknowledges that many investors, left on their own, make mistakes—such as saving too little, trading too much, making poor asset allocation decisions, or paying tax penalties on early withdrawals. Advisers, whether fiduciaries or not, can help investors avoid these kinds of mistakes. If IRA investors with smaller balances, those less than $100,000, are unable to obtain advice at reasonable cost, these mistakes could be quite costly.

In our comment letter, using the Impact Analysis's assumptions about asset levels and the rate at which investors migrate from front-end load funds to fee-based accounts, we estimate that mistakes by investors lacking advice could cost $62 billion over 10 years. If the remaining 25 percent of IRA investors, whose balances are $100,000 or more, incur higher costs in a fee-based arrangement, that could cost society an additional $47 billion over 10 years, for total loss of $109 billion.

As the Department recognizes, this issue is vitally important to American workers and their families. Research by ICI and others shows that the U.S. retirement system is working to help deliver a secure future for millions of Americans. That could easily be impaired by a rule that is unworkable in its details, despite the intention to foster investors' best interests.

We hope the Department takes seriously our comments and recommended changes. As a start, the Department should revisit its Regulatory Impact Analysis, which should help it craft a more workable rule. ICI stands ready to assist the Department.

I look forward to your questions.