



Setting the Record Straight: Industry’s “Unworkable” Claims

As the public hearing continues, industry and its allies, including the Financial Services Institute, have repeatedly used scare tactics in an attempt to delay and kill the Department of Labor’s (DOL) rule to protect Americans’ retirement security. They have incorrectly claimed the rule is “unworkable.” But here are the facts:

The DOL has a mission to protect retirement savers. Some have asserted there should be a uniform fiduciary standard, resting on action by the Securities and Exchange Commission (SEC) to update standards for investment advice in securities transactions. The reality is, the DOL and SEC have different statutes and mandates, and no SEC fiduciary rule could ever protect all of the assets retirement accounts can hold, since the SEC only regulates securities. Forcing the DOL to wait for the SEC is a delay tactic and ignores the extensive coordination between the two to avoid conflicts between standards.

The DOL rule supports existing business models, and investors will be able to choose the approach they prefer. The proposed rule supports a range of business models, including both fee-based and commission-based models. The Best Interest Contract Exemption allows sales-based commissions and the sale of proprietary products to continue so long as firms and advisers commit to putting their clients’ best interests first, charge reasonable fees, and mitigate existing conflicts. This ensures investors will be able to choose what they prefer, but also guarantees them best interest advice.

The DOL’s Regulatory Impact Analysis (RIA) accurately justifies the need for an updated rule. In response to many requests, the DOL included with its proposal an exhaustive RIA studying the costs and benefits justifying its proposed rule. The RIA draws on numerous sources including analyses of investments subject to conflicts, government reports, and independent studies.

Small accounts will not lose access to advice. Those who managed to save for retirement with smaller accounts have the most to lose from the status quo and the most to gain from the proposed rule. Too many retirement savers currently pay fees that are too high or are invested in products that are not in their best interest. While some high-cost advisers may decide not to serve small accounts under a best interest standard, there are many investment advisers currently serving small savers and small businesses as fiduciaries who can take on more clients, and who offer low-cost, high-quality advice.

Industry innovators providing fiduciary investment advice are making high-quality, low-cost advice available to clients. Some firms are combining retirement investment advice and technology to reach smaller savers, small businesses, and others with high-quality, low-cost investment options. These firms have committed to dedicated and individualized advice and services similar to what many would receive through a more traditional means.

The benefits to investors far outweigh the costs of compliance to the industry. Even under conservative estimates, the costs to the industry pale in comparison to the benefits to retirement savers. Using industry surveys, the DOL estimates the compliance cost of the proposal will total between \$2.4 billion and \$5.7 billion over 10 years. On the other hand, focusing on just one segment of the IRA market, the DOL estimates that the proposal may deliver gains of between \$40 billion and \$44 billion over 10 years to investors through lower costs and higher returns.

The rule will not increase liability costs. The rule makes clear that compliance is based on circumstances at the time advice is rendered, not on the outcomes of such advice. Further, the rule allows firms to include predispute binding arbitration clauses in contracts, forcing clients into an arbitration forum rather than court. The fiduciary standard is currently required of many investment professionals today, and has not resulted in masses of litigation. If firms mitigate conflicts and serve their clients’ best interests, they should see liability risks actually reduced.

The Education Carveout ensures investors can easily receive general information about how to invest their retirement assets. The rule clearly distinguishes between advice subject to a fiduciary duty and investor education. General information, regardless of the form of information or materials provided, falls under education and is not subject to a fiduciary duty. Guidance becomes advice when the information provided includes a specific investment recommendation that an investor may act upon.

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