



**STATEMENT FOR THE RECORD**

**SUBMITTED TO THE**

**UNITED STATES DEPARTMENT OF LABOR  
EMPLOYEE BENEFITS SECURITY ADMINISTRATION**

**On**

**Conflict of Interest Proposed Rule**

**Public Hearing**

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**PIABA  
2415 A Wilcox Drive  
Norman, OK 73069**

For further information, contact:  
Joseph Peiffer  
(504) 586-5259  
President

I appear here today as the President of the Public Investors Arbitration Bar Association (“PIABA”), an international bar association comprised of attorneys that represent victims of financial abuse. Collectively, our members have seen 10s of thousands of victims of conflicted advice. I have represented over 500 such investors. Last month, PIABA submitted a detailed comment letter to the Department of Labor in support of its proposal to update the definition of fiduciary advice under ERISA.<sup>1</sup>

I am here on behalf of the investors myself and my colleagues have represented. These are people who, invariably, trust their financial professional. They believe they are getting advice, not being talked to by a salesman. After all, the vast majority of these investors have placed their life savings with their broker. None of the people that I have ever represented realized that their broker might be held to a standard anything below that of a doctor or an attorney.

It’s no wonder that investors believe that brokers already have to live up to a fiduciary duty.<sup>2</sup> Brokerage firms’ advertisements already say things like they “will not rest” until their “client knows she comes first.” Or stating flatly that “Our advisors are ethically obligated to act with your best interests at heart.” There are dozens of examples of advertising like this.

Academic studies that have looked at this issue conclude what is obvious to anyone that has met an investor that has been the victim of conflicted advice. That is, investors do not know the duties that their financial professionals owe them.

One thing is clear. Right now, the very same brokerage firms that advertise like fiduciaries routinely contest that they owe a fiduciary duty to their clients. The Department of Labor rule would go a long way toward holding firms accountable in retirement accounts for the duty that they already say they have.

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<sup>1</sup> PIABA’s comment on this can be found here.

[http://piaba.org/system/files/comment\\_letter\\_pdfs/DOL%20Best%20Interest%20Rule%20Comment,%20RIN%201210-AB32%20\(July%2021,%202015\).pdf](http://piaba.org/system/files/comment_letter_pdfs/DOL%20Best%20Interest%20Rule%20Comment,%20RIN%201210-AB32%20(July%2021,%202015).pdf)

<sup>2</sup> PIABA’s report on Brokerage Firm Advertisements versus how they act when called to account for their behavior can be found here.

<https://piaba.org/system/files/pdfs/PIABA%20Conflicted%20Advice%20Report.pdf>

The lack of this duty has real world consequences for retirees and investors saving for retirement. The statistics are staggering. The White House Council of Economic Advisors estimates that \$17 billion is lost by investors every year to conflicted advice. That means that since Dodd-Frank asked the SEC to study this issue, investors have lost almost \$80 billion from brokerage firms' conflicted advice.

What does this mean on an individual level? Almost every week, we see a retiree come into our office who has lost a substantial amount of his life savings. These are often proud, strong workers that have saved to pay off their house, put their children through college and build a nest egg – all on middle-income salaries. These retirees often break down in my office when I explain to them how their investment was lost to conflicted advice. I have had clients that ran out of money and had to rent a room from his ex-wife. I have had clients live with me because they couldn't afford the gas and lodging to stay at a protracted arbitration hearing. I have, unfortunately, even had clients attempt suicide. I know the devastation that losing your life savings can have on hard-working Americans. This rule will make this better.

As an example of how this rule would help, I want to tell you about a group of Niagra Mohawk employees that I represented in Upstate NY. These blue-collar workers had built up enough years of service that they could live out their retirement by taking the monthly pension checks and supplementing that with other money that they had saved. However, their broker advised them to pull their money out of their traditional pensions and roll that and all of their savings over to the brokerage firm. If these investors had left their money in their pension plan, the broker would have made no commission, but the investors would have a guaranteed monthly income. After following the broker's advice, my clients had lost more than half of their life savings, had no pension income, but the broker made large commissions. And, when called to account for his advice, the broker and his firm denied they had any fiduciary duty to these clients. My clients lost this case and are now living on social security and the small amount of savings they have left.

The DOL Rule would directly address this problem by making any broker that gives rollover advice a fiduciary. Anyone looking at this from the prospective of a fiduciary would realize that a guaranteed income for healthy folks in their 60s was in the best interests of their clients. Without such a rule, brokers are free to argue

they met the “suitability” standard currently in play, take their commissions and not worry about whether doing so is in the retirees’ best interest. That must end.

We have all heard from the industry that this rule is too costly and that it will prevent smaller investors from receiving advice from a broker. However, the statistics do not bear that out. The overwhelming majority of respondents to a survey of financial industry participants said that extending a fiduciary standard to brokers “would not price investors out of the market for advice.” Indeed, a handful of states already hold brokers to a fiduciary standard and there is no evidence that smaller savers in those states have less access to financial services.

Finally, when comparing costs, it is helpful to keep in mind that it is investors that are paying dearly for this conflicted advice now – to the tune of \$17 billion annually. This rule should help prevent these conflicts on a macro level.

The members of PIABA and myself see the effect of this conflicted advice on an individual level. One of my clients worked at a chemical plant for a major corporation at an \$80,000 a year job until he got the conflicted advice that he should cash out his pension and roll over all his savings to the broker. He was out of money before he was eligible for Social Security and had to take a job for \$10 an hour stocking vending machines at his former employers’ plant.

This rule won’t help him or any of the other retirees I’ve talked about earlier. But swift action to confirm a strong fiduciary duty will help prevent this from happening to any other retirees in the future and ensure that, if it does happen, brokers and brokerage firms that breach this duty will be held accountable.