

I am writing to request to testify on behalf of Consumer Federation of America at the upcoming hearing on “Improving Investment Advice for Workers & Retirees.” CFA submitted a comment letter on the rule proposal August 6th. A copy of our letter is available here:

<https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA29/00039.pdf>.

If invited to testify, I would focus on rebutting arguments put forward by various industry organizations in their comment letters on the proposed rule. This would satisfy the requirement to address “material factual issues that could not be fully explored through written submission,” because the comment letters submitted in response to the proposal were not available for review until after the comment deadline had passed.

Within that general topic, I would be prepared to comment on the following topics:

1. Why brokerage and insurance industry criticism of the Department’s interpretation of the five-part test, as it applies to rollovers, is unfounded.
 - a. The Department’s interpretation in the Preamble does not indirectly reinstate the much broader definition in the 2016 rule.
 - b. Holding brokers’ and insurers’ rollover recommendations to the standard would not have the effect industry groups claim.
 - c. The industry groups’ proposed approach would reopen loopholes in the definition, leaving workers and retirees vulnerable to inappropriate rollover recommendations.
2. Why brokerage and insurance industry groups’ arguments in support of basing the new class exemption on non-fiduciary regulatory standards of securities and insurance regulators are unfounded.
 - a. Industry groups have failed to provide any evidence that the SEC’s Regulation Best Interest and the NAIC model annuities rule will result in best interest advice. The limited evidence currently available suggests that they will not.
 - b. Industry groups have failed to provide any evidence that provisions in Reg BI and the NAIC model rule to address conflicts of interest will prevent those conflicts from tainting their recommendations. The limited evidence currently available suggests they will not.
 - c. Industry groups have failed to provide any evidence that the required disclosures will enable retirement savers to make informed choices among different types of financial professional or protect themselves from the harmful impact of conflicts. The limited evidence currently available suggests they will not.

Please let me know if you have any questions or need additional information.

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