

To Whom it May Concern:

My name is Michelle Richter-Gordon. I have 25 years experience in the life insurance and annuity industry, the vast majority of which I have spent as an advocate for best-in-class insured solutions to reach the hands of consumers.

In that capacity and identity, I have spent the better part of the last 5 years arguing in favor of a regulatory framework that would enable systematic incorporation of annuities (and other income solutions) into historically disintegrated retirement planning techniques that are delivered under a variety of regulatory umbrellas.

I fundamentally believe that regulatory conflation between financial advice and investment advice detrimentally impacts how American financial services are delivered to our countrypeople. As I think it likely such a view may not previously have been presented to the Department of Labor (DOL), I will explain it, and what could be done about it, in detail in this letter.

As a result of what I had imagined would have presented as alignment between my beliefs and your legislative intent, I have found myself stunned, and so terribly saddened, that my eager anticipation of this proposal now delivered cannot result in my support of the "Retirement Security Rule: Definition of an Investment Advice Fiduciary" as it stands.

My most material point of concern is that this proposal presupposes that all forms of financial professional (FP) are qualified to, and do, sell investment advice; to be blunt, this is not the current state of financial services. As such, not only does this proposal not accurately capture the roles different types of FPs play in creating a robust, resilient, diverse, accessible, and dynamic retirement market, it also disadvantages investment advisers' value proposition, which, under FINRA's historical interpretations, are the only form of FP "entitled" (as in, "is authorized to hold the title") to say they "sell" investment advice.

**I write to you because I have been trying and failing during the more than two months since the release of this draft, to determine: what could possibly be the correct title and professional identity of the person who is required to say they sell investment advice, while not being able to say they ARE an investment advisor?**

**I respectfully request your consideration that "investment" and "financial" are not synonyms.**

I respectfully request your consideration that your intention in this legislative proposal may have been to use the word "financial" in place of the word "investment".

From there, I respectfully request reconsideration of how the government holistically desires for financial advice be sold, given certain information I will share below.

The heart of the logical and FP identity conundrum of your proposal:

On one hand, DOL will require individual registered reps and insurance professionals to say to consumers that they provide, for compensation, "investment advice", while, on the other hand, those who hold brokerage licenses are enjoined by FINRA from calling themselves "investment advisors" or "financial advisors." (That is, while fixed insurance product sales conduct isn't governed by FINRA, FINRA says only Registered Investment Advisers (RIAs) and their Investment Adviser Representatives (IARs) may use the "advisor" title in conjunction with investment and financial advice, as clarified in FAQs to Reg BI) <https://www.finra.org/rules-guidance/key-topics/regulation-best-interest/faq>)

I, acting in my capacity as strategic consultant to MRG Advisors' insurance company and Financial Institution clients, respectfully request an audience with the regulator who can explain the logic of a non-investment-advisor selling investment advice to me, so that I can explain it to my clients.

In response to your request for feedback regarding what various financial distribution-related titles mean or should mean, I hope you'll find below some useful points to review.

America's financial services system is set up to pay for financial planning and other financial services through investment advisory fees. This not only disadvantages the insurance, which means liability minimization, industry, it also materially suboptimizes American retirements, because those currently qualified to routinely call themselves "advisors" under FINRA interpretation (RIAs) experience the vast majority of their compensation via basis points (bps) collected on Assets Under Management (AUM) or Advisement (AUA). When advisors are focused on maximizing AUM, they may not focus on minimizing consumer liabilities (which is what insurance does). This focus on asset maximization as the only valid consumer finance lens disadvantages American "financials", which means (assets – liabilities), not just assets.

America would benefit from government legislating into existence a new identity of fiduciary advisor that focuses on (pick any one of these three):

- (1) Retirement income (an income statement, not left side of balance sheet, worldview) Advisement
- (2) Wealth (statement of net worth worldview)- NOT ASSETS- Advisement
- (3) Liability minimization ("insurance advising") Advisement

I respectfully request your consideration of my viewpoint that: insurance professionals do not sell investment advice at all. In selling what they do sell, insurance professionals ethically perform a professional role that is not currently systematically advisement, but which could be in the future, were regulators to decide to allow it to be.

Do insurance professionals provide financial advice? Absolutely. Is "financial" a synonym to "investment"? ABSOLUTELY NOT. Do registered representatives and insurance professionals "sell" financial advice? Well, historically, they have always and only sold products (nouns), and were not permitted to say they were selling "advice", which is inherently the end result of an "advising" (services) process. (See "sell" definition below) It seems this logic will now be changed, and I am struggling to understand how to explain this...

Note please that, while not all assets are investments, all investments are indeed assets.

"Assets" means "things we record on the left side of a balance sheet".

Unlike those who sell "investment advice", which is directed towards the left side of the balance sheet, what insurance professionals sell are "liability-minimization" products (they don't yet get to sell liability-minimization advising, because government has not yet codified such a nationally recognized identity)

"Liabilities" means "things we record on the right side of a balance sheet".

In the context of insurance and financial services, "to sell" means "to exchange remuneration in direct respect to x", where, in agent and broker channels, x is a noun (product), and in the RIA channel, x is a repeatable verb (service)("advising")

40 Act RIAs are service providers. These RIAs DON'T sell products, they DO introduce products while advising upon a portfolio that contains products. "Advisors whose product sales comprise..." is a logically unacceptable sentence part. All advisors sell services, not products.

Unfortunately, financial advising is regulated under the 40 Act, which intended to govern investment advising. Financial advising and investment advising are regulated as if they were synonyms. But investment advising occurs on left side of balance sheet only. The vast majority of RIA compensation occurring through the lens of AUM, because financial advisement is perceived regulatorily to be a synonym of investment advising, **severely distorts how financial advisement is performed in America**. Advisors sell "advising/having advised" (verbs). The advice they provide can only come to occur upon the conclusion of an advising process. They are selling the advising process.

Were this logic embraced, it could even be explained to a consumer: I sell products (agent or broker) or I sell services (actual investment adviser or financial planner). Very simple.

Insurance doesn't have a nationally codified service sale ("advisory") frame yet. Fiduciaries, like all advisors, are service providers who sell services (verbs).

**Regulators should please consider allowing an advisory framework for one of the potential FP identities I described above.**

Mathematical/Logical explanation of argument:

1. Financial advis(o)er= Wealth advisor
2. Wealth= (Assets-Liabilities). Substituting (2) into (1), we get (3)
3. Financial Advis(o)er= (Assets-Liabilities) Advisor

Multiplying values in parentheses by "advisor" in (3) above, we arrive at (4)

4. Financial Adviser= Assets Adviser - Liabilities Adviser
5. Insurance means "the liability minimization industry".

To a consumer, (-liabilities) = (+ insurance);

By which I mean: it is only by buying insurance from a creditworthy issuer that Americans can reduce on their balance sheet those liabilities that now have been hedged by the purchase of an offsetting insurance policy

Accordingly, substituting (5) into (1) yields:

6. Financial Adviser= Assets Adviser + Insurance Adviser

An investment adviser, as codified by the Investment Advisers' Act of 1940 (as amended), is an asset adviser.

Investment advisement means "asset maximization subject to risk tolerance constraints"

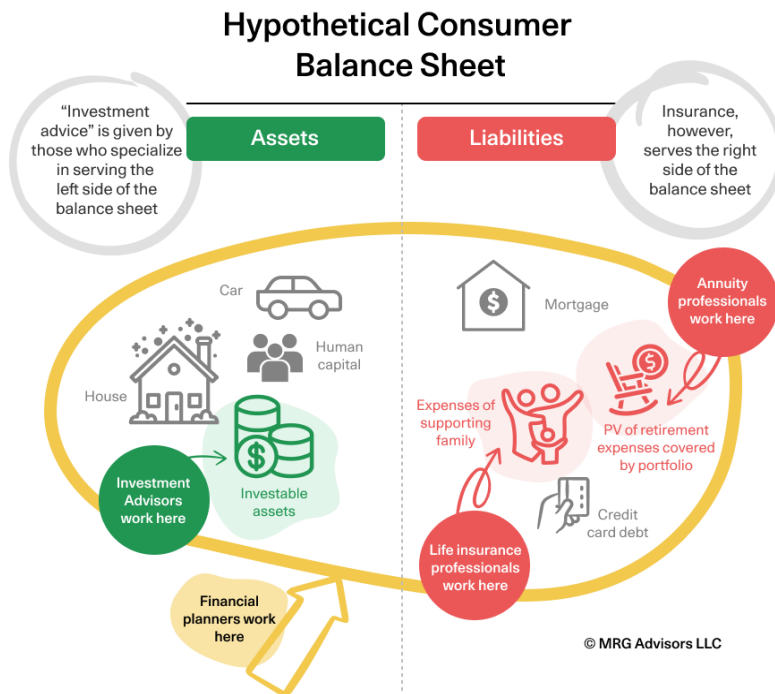
(interestingly, assessing "risk of running out of money and becoming a burden upon my heirs" is not a standard attribute of a "risk tolerance questionnaire" used to determine the appropriateness of investment risk taken in qualified accounts. This is yet another symptom of what happens when the broken regulatory framework causes the world to be seen as if maximizing the left side of balance sheet were the only valid consumer finance lens.)

Restating 6 in these terms results in 7

7. Financial Adviser= IAR + Insurance Adviser

Accordingly, an insurance adviser, if ever such an identity were to be acknowledged, would not be a seller of investment ("asset maximization") advice.

The Investment Adviser Representative (IAR) of the RIA is the only form of financial professional (FP) that sells investment advice/advising. This is literally in the identity name.



Agents and brokers sell products under Best Interests standards, and they have not historically sold investment advice.

Governing financial advisement, which more or less means financial planning, under the 40 Act, feels deeply illogical. This is because investments are a subset of consumer financials, not the other way around. Financial advising should not be governed under investment advising. Investment advising should, along with liability advising, be governed under financial advising.

Pictographic explanation of argument:

Unfortunately, though, instead of there being recognition of the above logic, “Insurance Adviser” is unrecognized, making it the only invalid identity in America in 2023. Insurance advisor, like retirement income adviser, is an identity undefined, thus unprotected.

It is because of non-recognition of any of the 3 valid advisory identities I described on page 2 of this letter that “insurancism” remains the last socially acceptable prejudice in America. Insurancism is so rampant in our society that it is considered acceptable conduct (by faith-based financial educators, no less!) to publicly refer to the insurance industry’s researchers as “goobers living in their mothers’ basements”; when, in actuality, only one of them, David Blanchett, is in fact a goober (permissioned joke, original accusation unacceptable)

Since 2020, I have been publishing pieces describing this perspective and why I believe its acknowledgment would benefit America, in in-industry publications such as:

- InvestmentNews
- Kitces.com’s Weekend Reading for Financial Planners, Jan 21-22 2022 edition
- Life Annuity Specialist (an FT publication)(many citations)
- That Annuity Show podcast (at least four times explaining)
- ThinkAdvisor

Vettafi/Advisor Perspectives (multiple self-written pieces)  
Wealthmanagement.com (multiple self-written pieces)

(Please advise if me providing a compilation of these articles would be of benefit)

So, in summation:

1. In this legislative draft, please consider find/replacing “investment” with “financial”
2. Please consider codifying one of the 3 fiduciary advisement identities described on page 2

Respectfully yours,

Michelle Richter-Gordon, and on behalf of MRG Advisors, LLC  
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#InsuranceAdvisor #IncomeAdvisor #ImNoDummy #RegulateMe

ONLY GOVERNMENTAL RESPONSES TO THIS LETTER WILL RECEIVE REPLY

MRG Advisors is a strategic consultancy that is owned and operated exclusively by Michelle Richter-Gordon

Michelle Richter-Gordon is co-owner of an RIA named Annuity Research & Consulting (ARC) providing ERISA expert evaluative services in the annuity space, at [www.annuityresearch.com](http://www.annuityresearch.com). Michelle Richter-Gordon also serves as executive director of the Institutional Retirement Income Council (IRIC), a non-profit think tank communicating the advantages of income derived directly from Defined Contribution plans, at [www.ircouncil.org](http://www.ircouncil.org). Ms. Richter-Gordon’s firmly-held opinions are her own, and they are necessarily not reflective of the viewpoint of either ARC or the IRIC.