

# PUBLIC SUBMISSION

<b>Received:</b> December 31, 2023 <b>Tracking No.</b> lqt-yb00-2ehp <b>Comments Due:</b> January 02, 2024 <b>Submission Type:</b> Web
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**Docket:** EBSA-2023-0014  
Definition of an Investment Advice Fiduciary

**Comment On:** EBSA-2023-0014-0001  
Retirement Security Rule: Definition of an Investment Advice Fiduciary

**Document:** 1210-AC02 comment 00288 Consumer Technology Association  
12312023

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## Submitter Information

**Organization:** Consumer Technology Association

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## General Comment

Retirement Security Rule: Definition of an Investment Advice Fiduciary  
RIN 1210-AC02  
Comments of the Consumer Technology Association

Below please find the Consumer Technology Association's abbreviated comments on Retirement Security Rule: Definition of an Investment Advice Fiduciary RIN 1210-AC02. Our full comments can be found in the attached document.

The Consumer Technology Association, representing over 1000 US technology companies, fully supports the goals behind the proposal that all American employees should be getting financial advice based on a clear fiduciary obligation. We find it inconceivable that American business leaders, other than those running front-loaded or high-commission mutual funds would oppose the principles behind this pro-employee proposal. Therefore, we support the Department's proposed rule amending the current regulation that defines who is a "fiduciary" of an employee benefit plan for purposes of Title I of the Employee Retirement Income Security Act of 1974 (ERISA)

This altered rule marks a significant stride toward safeguarding American investors. It

mandates that trusted investment advisers uphold elevated standards of care and loyalty in their investment recommendations, steering clear of suggestions that prioritize their financial interests over the well-being of retirement savers. This is a matter of common sense.

In addition to crucial protections, the proposed rule encompasses advice about rollovers to IRAs, guidance to retirement plans like 401(k)s, where a substantial portion of retirement investments is held, and advice about insurance products not currently safeguarded under securities laws. These decisions are pivotal for millions of Americans, and this rule ensures that savers across all income levels can confidently collaborate with investment professionals, knowing that their adviser prioritizes their interests over third-party concerns. Such expectations are entirely reasonable.

This changed rule would mark a major step forward in the protection of American investors. The rule would protect retirement investors by requiring trusted advice providers to adhere to high standards of care and loyalty when they make investment recommendations, and to avoid recommendations that favor their financial interests at the expense of retirement savers. This should not be controversial - it is simply fair to all Americans who trust a financial advisor with their hard-earned savings.

The Department should not be swayed by groups, even national business groups claiming to represent the entire business community, in opposition to this proposal. They are merely advocating for a small, unrepresentative fraction of the financial industry, driven by financial motives that disregard the individual investors and the majority of business leaders' views. Numerous CEOs, including those leading well-known and smaller companies, support this proposal, understanding the importance of shielding employees from practices such as churning or high commissions. More, many financial professionals, including well-known trading platforms and investment advisory firms, already meet the proposed standards and want to see rules in place that require high-quality retirement investment advice that is not tainted by conflicts of interest.

While we endorse the proposed rule, we recognize the potential for improvement. Companies like the Consumer Technology Association aim to assist employees in navigating retirement plan options out of genuine concern for their financial future. Voluntary corporate employee financial education offerings, such as Delta Airlines CEO Ed Bastien's announcement of a financial literacy program for all Delta employees, exemplify the positive impact of corporate financial well-being programs within clear, easy-to-follow guidelines.

We believe that companies providing financial literacy and explaining their benefits program should be protected from unnecessary mandates or requirements. These types of programs deserve a safe harbor as long as specific investment alternatives discussed provide little benefit to the employer other than the satisfaction that employees know to make good choices. Issues raised in prior comments and statements by organizations like the Society of Human Resource Management focus on structuring the rule to encourage, rather than hinder, programs assisting employees in making informed retirement planning decisions.

The proposed rule guarantees that savers of all income levels can confidently collaborate with investment professionals to grow their investments and prepare for retirement. America's workers and their families should not see excess fees and lost investment returns erode their retirement savings. As an employer, we want our workers to have confidence when entrusting their retirement security to investment professionals. Their trust should not be misplaced, and our workers deserve nothing less.

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## **Attachments**

CTA comments on Retirement Security Rule

Retirement Security Rule: Definition of an Investment Advice  
Fiduciary  
RIN 1210–AC02  
Comments of the Consumer Technology Association

The Consumer Technology Association, representing over 1000 US technology companies, fully supports the goals behind the proposal that all American employees should be getting financial advice based on a clear fiduciary obligation. We find it inconceivable that American business leaders, other than those running front-loaded or high-commission mutual funds or profiting from selling unsuspecting clients high-commission investments, would oppose the principles behind this pro-employee proposal. Therefore, we support the Department’s proposed rule amending the current regulation that defines who is a “fiduciary” of an employee benefit plan for purposes of Title I of the Employee Retirement Income Security Act of 1974 (ERISA)

The proposed changes would clarify and improve today’s fiduciary definition by removing three prongs in the five-part test used to determine when a financial professional is considered an investment advice fiduciary under ERISA. The three prongs at issue require that the person providing the advice does so regularly; that the advice is under a mutual understanding; and that the advice will serve as a primary basis for decision-making.

The current five-part test too often works to defeat legitimate retirement investor expectations of impartial advice and allows some advice relationships to occur where there is no best interest standard. The current test was adopted in 1975, a time when IRAs were less prevalent, and 401(k) plans had yet to materialize. At that time, defined benefit pensions were the primary source of retirement

savings for most working Americans. Recognizing the seismic shifts in the financial landscape over the past four decades, the Department's proposed rule states that a person should be an investment advice fiduciary under ERISA if they provide investment advice or make an investment recommendation for fee or compensation to a retirement investor like to a plan participant or the plan itself.

This altered rule marks a significant stride toward safeguarding American investors. It mandates that trusted investment advisers uphold elevated standards of care and loyalty in their investment recommendations, steering clear of suggestions that prioritize their financial interests over the well-being of retirement savers. This is a matter of common sense.

In addition to crucial protections, the proposed rule encompasses advice about rollovers to IRAs, guidance to retirement plans like 401(k)s, where a substantial portion of retirement investments is held, and advice about insurance products not currently safeguarded under securities laws. These decisions are pivotal for millions of Americans, and this rule ensures that savers across all income levels can confidently collaborate with investment professionals, knowing that their adviser prioritizes their interests over third-party concerns. Such expectations are entirely reasonable.

This changed rule would mark a major step forward in the protection of American investors. The rule would protect retirement investors by requiring trusted advice providers to adhere to high standards of care and loyalty when they make investment recommendations, and to avoid recommendations that favor their financial interests at the expense of retirement savers. This should

not be controversial - it is simply fair to all Americans who trust a financial advisor with their hard-earned savings.

The Department should not be swayed by groups, even national business groups claiming to represent the entire business community, in opposition to this proposal. They are merely advocating for a small, unrepresentative fraction of the financial industry, driven by financial motives that disregard the individual investors and the majority of business leaders' views. Numerous CEOs, including those leading well-known and smaller companies, support this proposal, understanding the importance of shielding employees from practices such as churning or high commissions. More, many financial professionals, including well-known trading platforms and investment advisory firms, already meet the proposed standards and want to see rules in place that require high-quality retirement investment advice that is not tainted by conflicts of interest.

A noteworthy comparison can be drawn between the protection afforded to individual investors and the rigorous laws safeguarding investors in franchises. If we are willing to extend strong disclosure and other protections to Americans investing in franchise businesses, it is only reasonable to offer even more basic safeguards to Americans investing their retirement funds. Trusted advisers should not be exempt from a higher duty of care.

While we endorse the proposed rule, we recognize the potential for improvement. Companies like the Consumer Technology Association aim to assist employees in navigating retirement plan options out of genuine concern for their financial future. Voluntary corporate employee financial education offerings, such as Delta Airlines CEO Ed Bastien's announcement of a financial literacy

program for all Delta employees, exemplify the positive impact of corporate financial well-being programs within clear, easy-to-follow guidelines.

Promoting employee financial literacy is integral to the CTA success story in attracting and retaining a highly qualified, high-performance workforce. Programs aiding employees with student loans, offering assistance to purchase homes, and bringing in financial experts exemplify our dedication. CTA occasionally brings in financial experts to talk to our employees and ensure they understand basic principles including the value of our generous 401k match, what a rollover is, and the advantage of saving in tax-preferred accounts. Caring about the financial future of over 160 employees, we are gratified that CTA has nearly 100% participation in our 401k and most employees appreciate our voluntary offerings with multiple investment choices. We are proud to have received numerous human resources awards for our unique offerings designed to enable employees to achieve some level of financial security.

We believe that companies providing financial literacy and explaining their benefits program should be protected from unnecessary mandates or requirements. These types of programs deserve a safe harbor as long as specific investment alternatives discussed provide little benefit to the employer other than the satisfaction that employees know to make good choices. Issues raised in prior comments and statements by organizations like the Society of Human Resource Management focus on structuring the rule to encourage, rather than hinder, programs assisting employees in making informed retirement planning decisions.

Our employees and all Americans deserve the best possible retirement. Losing a percentage of funds annually to hidden fees or kickbacks is an unconscionable theft that the government should address. Protecting the vulnerable from predatory financial behavior is a crucial role of government in a free-market economy. Americans naturally trust their financial advisers, and our government must ensure that this trust is justified, with advisers held to a fiduciary duty to act in the best financial interests of the client.

The proposed rule guarantees that savers of all income levels can confidently collaborate with investment professionals to grow their investments and prepare for retirement. America's workers and their families should not see excess fees and lost investment returns erode their retirement savings. As an employer, we want our workers to have confidence when entrusting their retirement security to investment professionals. Their trust should not be misplaced, and our workers deserve nothing less.