BETTER MARKETS

The proposed rule represents a huge step forward in providing retirement savers with stronger protections against the widespread and damaging conflicts of interest that have been allowed to persist among many financial advisers since the Department of Labor's (DOL) original rule was adopted in 1975.

- The Problem. The DOL's existing rule contains huge loopholes that have allowed financial advisers — for decades and with impunity — to siphon off untold *trillions* of dollars in hard-earned savings from workers and retirees struggling to prepare for and maintain a secure and dignified retirement.

    - The problem is increasingly acute because the retirement landscape has changed profoundly since the rule was first adopted in 1975. Traditional pension plans are becoming a thing of the past, and the vast majority of Americans are now responsible for managing their own retirement assets.

    - By conservative estimates, conflicts of interest among advisers are costing American workers and retirees an average of up to $43 billion per year—or nearly $82,000 per minute. These are lost savings that people need in retirement to meet basic needs and maintain a decent quality of life.

    - America is already facing a retirement crisis, as the majority of Americans have fallen behind in setting aside adequate retirement savings. The gaps in the DOL's old fiduciary duty rule are exacerbating this problem by siphoning away a huge fraction of whatever retirement savings workers have managed to save.

- The Proposed Rule. We applaud the DOL for updating and improving the current rule in critically important respects. For example, the proposed rule closes the "regular basis" and "primary basis" loopholes and it applies the protections of the fiduciary standard whenever an adviser urges a retirement saver to roll their savings out of an ERISA plan and into another vehicle such as an IRA. We urge the DOL to adhere to these changes as the proposal is finalized. In addition, we urge the DOL to strengthen the proposed rule in certain respects to help ensure that it provides the best possible protections for all workers and retirees, especially those with modest savings who can least afford the bloated commissions and poor returns that result from investment advice corrupted by conflicts of interest.

    - The definition of investment advice in the proposed rule still includes a "mutual understanding" element that must be removed or modified.

    - The platform provider carve-out should be available only to large plans, as is the seller's exemption.

1825 K Street, NW, Suite 1080, Washington, DC 20006 | TELEPHONE (1) 202.618-6464 | FAX (1) 202.618.6465 | WEBSITE bettermarkets.com

- The DOL must reject calls to weaken the BIC exemption based on groundless claims about paperwork obligations, the assets classes covered by the exemption, or the disclosure requirements.

- The DOL should stipulate the minimum required elements of a firm's policies and procedures under the BIC exemption, and provide a model Best Interest Contract.

- The DOL should provide that any violation of the BIC exemption not only gives rise to a cause of action for breach of the contract, but also nullifies the exemption. This applies specifically to any failure to comply with applicable state and federal law and any failure to adopt required policies and procedures.

- The DOL should prohibit the use of mandatory pre-dispute arbitration clauses in the contracts between advisers and investors.

* <u>The Baseless Counterarguments.</u> We urge the DOL not to be swayed by the onslaught of arguments coming from broker-dealers, insurance companies, and others who seek to kill, weaken, or delay the proposal. In crafting the proposed rule, the DOL has already made significant accommodations to industry concerns, as exemplified by the provisions allowing commission-based compensation for advisers. Any further dilution in the proposed rule will harm retirement savers and undermine Congress's goal of providing the strongest possible safeguards against conflicts of interest that can severely deplete hard-earned retirement savings. Specifically—

    - The proposed rule will help, not hurt, low and middle income investors.

    - The DOL must not be required to wait for the SEC to address flaws in its own standards governing securities advice.

    - The regulatory approach adopted in the United Kingdom and contemplated elsewhere squarely supports the proposed rule.

    - The proposed rule will not create overwhelming litigation liability.

    - A disclosure regime is no substitute for an affirmative fiduciary duty to put the client's best interest first.

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