# Fact Sheet: Don't Fall for SIFMA's Spin Campaign

The Securities Industry and Financial Markets Association (SIFMA) - which boasts that it is the "voice of the U.S. securities industry, representing broker-dealers," Wall Street banks, and others - has relentlessly worked to delay, derail, and kill the Department of Labor's (DOL) proposed rule to require that the clients' best interest be put first and foremost. SIFMA's spin is little more than a sophisticated misinformation campaign, apparently designed more to mislead than to inform. That should be no surprise to anyone: SIFMA works for its members (i.e., brokers, financial advisors, Wall Street's biggest banks, etc.), and they stand to lose tens of billions of dollars if they have to put their clients' interests above their own economic interests. Let us set the record straight:

**The law requires the DOL – and the DOL alone – to enforce the retirement laws protecting Americans' tax-advantaged retirement savings.** SIFMA's alternate proposal and comment letter have asserted that DOL acted outside of its authority and that FINRA and the SEC should take action in this space. However, SIFMA fails to disclose that, in 1974, the DOL was legally mandated with administering the Employee Retirement Income Security Act (ERISA), which required those who provide retirement advice to put their clients' best interests first. Not only do those Americans saving for retirement deserve such protections, but those savings received favorable tax treatment, which means everyone in the country is effectively subsidizing those retirement savings. Protecting those savings and maximizing the amounts that Americans will have available for retirement are what ERISA is all about and what the DOL's proposed rule to end brokers' conflicts of interest will do.

**The DOL's 40 year-old rules are outdated and need to be updated to reflect how Americans save for retirement today.** The DOL's rules related to promoting Americans saving for retirement and protecting their savings are 40 years-old and contain large loopholes. They simply have not kept up to date with the massive changes in the way Americans save for retirement. For example, the country has shifted from a company-based pension system to a "you're on your own" 401K and IRA self-savings model. Yet, 401Ks didn't exist and IRAs were just created 40 years ago when the DOL's rules were first passed. The DOL's proposed updated Conflicts of Interest Rule will be applicable to today's retirement realities and stop very damaging adviser practices where the clients' interests are not put first.

**The SEC has a different legal mandate and cannot legally protect retirement savers from conflicted advice regarding all products, including common retirement products.** The DOL and the SEC have different statutes and mandates, and no SEC fiduciary rule (even if in the unlikely event it ever passed one) could ever protect all of the assets retirement accounts can hold, since the SEC only regulates securities. SIFMA is merely attempting to bully the DOL into disregarding the ERISA law, its duty to protect those saving for retirement, and subordinate its legal duties to the SEC. However, just as the SEC should fulfill its legal duties, the DOL should as well and neither should subordinate their statutory duties to the other.

**A disclosure-based regime is no substitute for a best interest standard.** The SIFMA proposal also heavily relied on a disclosure-based regime without addressing the compensation practices and incentives which give rise to conflicts of interest among advisers. Studies have proven time and again that disclosures alone simply fail to raise investor awareness about products, services, and, most importantly, conflicts of interest. Relying on disclosures to cure the many pernicious problems in the DOL's outdated rule would violate the mandate of ERISA and would leave investors at the mercy of brokers who would still be able to put their interests before the best interests of their clients.

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**Retirement savers *can* receive general information about investing retirement assets through the Education Carve-Out.** The rule clearly distinguishes between advice subject to a fiduciary duty and investor education, which SIFMA has incorrectly claimed is not the case. General information, regardless of the form of information or materials provided, falls under education and is not subject to a fiduciary duty. Guidance becomes advice when the information provided includes a specific investment recommendation that an investor may act upon, which is exactly when those providing advice should be acting in their clients' best interest not their own economic interests.

***Bottom Line:*** SIFMA's claims are little more than self-interested scare tactics to protect their members' lucrative income. Its alternatives simply will not end the conflicts of interest that today siphon away so much of so many Americans' hard-earned retirement savings. Its proposal would allow brokers to continue business essentially as usual, under the fatally flawed claims that more disclosure can solve the problem or waiting (hopelessly) for the SEC to pass a rule that will be inadequate and inapplicable. Only the DOL's rule requiring SIFMA's brokers and others to put their clients' best interests first will adequately protect Americans saving for retirement. It's time stop brokers from putting their economic interests above their clients and to require that the clients' best interests come first and foremost.

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