FACT SHEET: The Department of Labor's Best Interest Rules Will Protect Retirement Savers from Bad Investment Advice
April 23, 2024

The Department of Labor (DOL) has just released its final rules requiring all financial professionals to act in the best interest of their clients when they give advice about retirement investments. These reforms will provide essential protections for all Americans who are trying to save and invest for a secure and dignified retirement. Yet many in the financial industry—especially insurance companies—have battled relentlessly to stop these rules. Why? Because the rules will end their ability to extract easy profits at the expense of their retirement-saver clients. None of the substantive and procedural attacks on the rules have merit, as explained below. Throughout history, the financial services industry has met new rules with howls of protest about compliance costs and dire predictions that the industry will falter. Each time, these complaints have proven hollow and the industry has adapted. That will happen here as well. And to the extent advisers insist they cannot afford to stay in business without taking unfair advantage of their clients, other advisers will take their place and retirement savers will be better off. The DOL's new best interest rules deserve to be fully implemented to help American workers and retirees, not attacked in Congress, the media, or the courts.

THE PROBLEM: Outdated Rules Allow Advisers to Take Advantage of Their Clients.

- Due to loopholes in some outdated DOL rules, many financial advisers can still recommend investments that increase their own income handsomely but saddle their clients with financial products that cost too much, perform poorly, lock up savings, or carry excessive risks.
- This conflicted advice can cost individual workers and retirees tens of thousands or even hundreds of thousands of dollars, in many cases delaying, degrading, or preventing retirement altogether. Collectively, the harm amounts to tens of billions of dollars a year in lost retirement savings.
- As a direct result of this conflicted advice, and after a lifetime of hard work, many Americans find that a financially secure and dignified retirement is beyond their reach. Bad investment advice has forced them to delay retirement for years, suffer a lower standard of living, or even go without basic necessities.

THE SOLUTION: Close Loopholes and Beef up Advisers' Duty to Serve Clients' Best Interest.

- The DOL's rules will accomplish two key things. First, and most important, they will close loopholes in the 50-year-old rule defining which advisers are covered by the best interest standard. Second, they will clarify and strengthen the steps that advisers must take to ensure their conflicts of interest don't contaminate the advice they give (set forth in s "Prohibited Transaction Exemption").
- These sensible reforms will ensure that the best interest standard—
  - applies to ***one-time advice***, such as whether to roll over a lifetime of savings from a workplace 401(k) to a new individual retirement account, which is typically a huge financial decision;
  - applies to recommendations about ***all types of investments***, including insurance products such as fixed indexed annuities that can take a terrible toll on a retirement saver's finances;
  - protects not only individual savers but also ***retirement plan sponsors*** who need objective advice when selecting investment options, from a complex and confusing array of choices, for the benefit of their hardworking employees.

THE MERITLESS ATTACKS: Demonstrably False.

- ***Current protections aren't adequate***. Contrary to what some financial industry opponents claim, other rules do not and cannot protect retirement savers from adviser conflicts of interest. For example—
  - The SEC's Regulation Best Interest (Reg BI), applicable to securities brokers, is too narrow since it only applies to recommendations about securities, not the many other investments often

urged upon retirement savers, including insurance products, precious metals, real estate, futures contracts, and even some cryptocurrencies. Moreover, the SEC's rule only applies to recommendations to individual retail customers, not advice to retirement plan sponsors struggling to pick sound investment options for their employees' retirement plans.

  - The state standards governing insurance recommendations are totally inadequate to protect retirement savers. To begin, their model annuity rule, issued by the National Association of Insurance Commissioners, doesn't apply in all states. Moreover, it doesn't actually require agents to act in the best interest of their clients. Finally, it even exempts cash and non-cash compensation from the list of conflicts of interest their rule purports to address, thus carving out the most powerful and toxic incentives that insurance agents face.

- ***The rules won't deprive small savers with low account balances from access*** to investment advice, contrary to industry scare tactics. These claims have been thoroughly debunked in rigorous studies.
  - Moreover, some advisers today already operate under a strong best interest or "fiduciary" standard, and *they* serve clients all along the income spectrum.
  - In addition, the DOL rules broadly align with the SEC's Reg BI, and there is no evidence that Reg BI has reduced small savers' access to high-quality investment recommendations.
  - Far from harming small savers, the new rules will provide them with the protections they need most, since they can least afford to have their nest eggs drained by advisers pushing bad investments for their own gain.

- ***The requirements do not impose heavy compliance costs.*** The DOL has carefully designed the new rules to minimize compliance costs. The requirements align closely with the SEC's Reg BI applicable to brokers making securities recommendations. Moreover, the requirements are reasonable on their face, essentially requiring advisers to do four things:
  - follow basic standards of conduct, including acting in the client's best interest, not overcharging for their services, and not making misleading statements about investments;
  - disclose basic information that all investors need so they can understand any conflicts of interest the adviser has, the services to be provided, and the fees and costs they will pay;
  - carefully evaluate rollover recommendations to ensure they really are in the best interest of the client and provide the client with a written explanation of the basis for that recommendation;
  - adopt policies and procedures designed to ensure the adviser's ongoing compliance with these requirements.

- ***The DOL followed a thorough, fair, and transparent rulemaking process.*** Contrary to some industry critics, the DOL provided ample opportunity to comment on the rules after they were released back in early November of 2023. Moreover, the DOL held two full days of public hearings at which stakeholders from all sides offered their input. In short, the DOL fully complied in letter and in spirit with all the requirements applicable to federal agency rulemaking. The industry's complaints are based not on the facts and the law but on a fervent desire to protect their outsized profits that come at the expense of their clients.

- ***The DOL respected federal court precedent.*** In accordance with a 2018 opinion from the U.S. Court of Appeals for the Fifth Circuit—a decision that was widely criticized but never challenged by the prior administration—the DOL has written the rules to address the court's primary concerns.
  - First, the rules ensure that those giving retirement advice are covered by the best interest standard only where it is reasonable to conclude that there is a relationship of trust and confidence between the adviser and the client and the advice is individualized.
  - Second, the rules nowhere impose new contractual or warranty obligations that could give rise to novel private causes of action for violations of the rules.