

May 15, 2024

The Honorable Joe Manchin
United States Senate
306 Hart Senate Office Building
Washington, DC 20510

The Honorable Ted Budd
United States Senate
304 Russell Senate Office Building
Washington, DC 20510

The Honorable Bill Cassidy
United States Senate
455 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Roger Marshall
United States Senate
479A Russell Senate Office Building
Washington, DC 20510

Dear Senators Manchin, Budd, Cassidy, and Marshall:

On behalf of our members across the country, the undersigned organizations write to you to support the passage of a Congressional Review Act (CRA) resolution (S.J. Res. 79) disapproving the Department of Labor's (DOL) "Retirement Security Rule: Definition of an Investment Advice Fiduciary" ([89 FR 32122](#) ("the final rule") published in the Federal Register on April 25, 2024. The final rule significantly, improperly, and unnecessarily expands the circumstances under which nearly all financial professionals would be treated as investment advice fiduciaries under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Tax Code), while simultaneously imposing substantial new barriers to the ability of such fiduciaries to receive fair compensation for their valuable services.

The federal courts have repeatedly rejected the DOL's efforts to expand the universe of financial professionals subject to an ERISA fiduciary only standard. A substantially similar rule was adopted by the DOL in 2016, and during the time it was in effect before being vacated by a federal Circuit Court of Appeals, this rule caused significant harm by severely limiting access to affordable financial professional help, a crucial resource for preparing for a secure and dignified retirement. More recently, the U.S. District Court in Florida struck down part of DOL's 2020 "interpretation" of investment advice fiduciary. To protect American workers and retirees against this foreseeable and unnecessary harm, we express our support for and ask that Congress act expeditiously to pass a CRA resolution to halt the implementation and enforcement of these rules.

The Rule Will Harm Lower- and Middle-Income Workers

The final rule poses a direct threat to the financial security of millions of America's workers and retirees, with a disproportionate impact on low- and middle-income workers. Unlike the theoretical concerns presented by the DOL to justify this rulemaking, there is real-world evidence that this rule will harm workers and retirees. Following the adoption of the substantially similar 2016 DOL Fiduciary Rule, [more than 10 million small retirement account owners with more than \\$900 billion in savings lost access to their financial professionals](#). The new rules are estimated to [increase the wealth gap by reducing projected individual retirement account balances of Black and Hispanic Americans by 20% over ten years](#). Millions of American consumers rely on financial professionals for retirement products, services, and guidance, but this final rule will [deprive them of choice and access to professional assistance and valuable retirement products by exposing financial professionals to a fiduciary only rule. The final rule will also vastly increase costs and burdens for financial professionals and their clients](#). This potential harm to retirement savers should be a cause for immediate action by Congress to enact a CRA resolution disapproving the final rule.

The New DOL Final Rule is Unnecessary in Light of Existing Federal & State Rules

The DOL adopted this final rule without providing credible evidence of deficiencies in the existing regulations or demonstrating the need for regulatory action, as is required by current agency rulemaking standards. Regulators at the federal and state levels have adopted and implemented significant and workable enhanced standards for retirement product recommendations over the past several years to directly and effectively address the same underlying concerns that the final rule purportedly is designed to address – without imposing a fiduciary-only standard or restricting access to professional financial guidance for millions of America’s workers and retirees. DOL’s regulation not only adds unnecessary complexity but also raises serious questions about the efficiency and effectiveness of the DOL’s rulemaking process.

The U.S. Securities and Exchange Commission (SEC) adopted [Regulation Best Interest](#) (Reg BI), which became effective on June 30, 2020, and after an implementation period, the SEC began to actively and aggressively enforce it starting in June 2022. Reg BI requires all broker-dealers and their registered representatives to always act in their client’s best interest without putting their interests first. In addition, forty-five states have adopted the revised National Association of Insurance Commissioners [model regulation](#) that requires insurance producers to satisfy a best interest standard that aligns with the SEC’s Reg BI. More than 90% of Americans now live in a state that has adopted a Best Interest standard for annuity sales. This comprehensive federal and state framework is working effectively to protect retirement savers.

The Final DOL Rule Undermines the Congressional Intent of the SECURE Act and the SECURE 2.0 Act and Jeopardizes the Realization of Benefits Provided by those Laws

The DOL’s final rule is counterproductive and inconsistent with the steps Congress has taken with overwhelming bipartisan support to enact the [SECURE Act](#) and the [SECURE 2.0 Act](#), two of the most sweeping laws to pass in more than a decade that are aimed to strengthen and enhance the private sector retirement system for millions more of our nation’s workers and retirees. In contrast to this progress, the final rule will limit access to guidance from financial professionals, which workers of all ages and incomes need to realize the benefits of the measures included in these laws, particularly the measures that benefit part-time workers, student loan holders, baby boomers, victims of domestic violence, victims of natural disasters and individuals seeking to establish emergency savings. Instead, the final rule will have a chilling effect on America’s workers and retirees’ ability to expand their opportunities to save for retirement during their working years.

The DOL Rulemaking Process was Rushed and Dismissive of Public Input

The DOL’s rulemaking process was conducted with a historically short comment period of 66 days, compared to over 100 days provided by DOL in previous efforts to adopt similar regulations in 2010 and 2016. Moreover, the DOL held a public hearing in the middle of the comment period, an unprecedented action which foreclosed the opportunity for stakeholders to review and address issues raised by other stakeholder comment letters preparation of testimony provided at the DOL’s hearing as these comment letters had yet to be submitted.

The shortened comment period also did not allow the DOL adequate time to study the far-reaching intended and unintended effects of the rule on small balance savers, older savers, new savers, and savers from communities that have experienced and continue to experience wealth and retirement savings gaps. The rulemaking process was conducted with a hasty approach that raises concerns about the DOL’s commitment to thorough and fair rulemaking, potentially eroding trust in the regulatory system. In doing so, concerns about the rules expressed by retirement savings providers, stakeholders, members of Congress, and the decisions of the federal courts were not given enough time to be made, nor was sufficient time permitted to allow the DOL to adequately reflect upon the substantial input received

during the comment period, which only serves to the detriment to the people who the DOL purported to seek to help by finalizing the rules.

The undersigned organizations support a “best interest” standard. In fact, the undersigned organizations have publicly and proactively supported the adoption of Reg BI and state laws and rules based on the NAIC model, which require all financial professionals to always act in their clients’ best interests when providing important guidance and information. Importantly, unlike the DOL’s latest rules, these existing regulations achieve their intended effect without depriving any workers or retirees of access to the products and services they need to prepare for retirement. While the DOL has asserted that its new rules also impose a “best interest” standard on financial professionals, these rules in fact needlessly and problematically go far beyond “best interest.” Under ERISA, fiduciaries are required to act in the “sole interest” of their clients; merely acting in the client’s best interest will not be sufficient to satisfy this standard. By requiring all financial professionals to bear the compliance burdens and legal risks associated with this “sole interest” standard, the DOL will make it far more difficult and expensive, if not impossible, for many workers and retirees to access affordable professional support to help them achieve a secure and dignified retirement.

Furthermore, the final rule is inconsistent with the federal appeals court decision that rejected the DOL's 2016 rule. The decision by the court in that case made it clear that fiduciary status should apply only when there is a special relationship of trust and confidence. The final rule represents DOL’s attempt to circumvent that decision by asserting that such a relationship exists whenever a financial professional makes a recommendation to a retirement saver. However, a special relationship of trust and confidence cannot spontaneously emerge. It must be intentionally cultivated over time. Given the DOL’s blatant disregard for the limitations on its authority as established by Congress and the federal courts, Congress would clearly be justified in passing the CRA resolution to disapprove the final rule.

Again, we support the passage of the CRA resolution. We thank you for your continued leadership in pursuing this legislation to ensure that America’s workers’ and retirees’ retirement security is preserved and protected from the economic harm that would be caused by the DOL regulatory overreach represented by the final rule if it is implemented and enforced. Our organizations welcome the opportunity to work with you and your staff to advance the CRA resolution.

Sincerely,

Alternative & Direct Investment Securities Association
American Bankers Association
American Council of Life Insurers
American Securities Association
Broker/Dealer Coordination Group
Committee of Annuity Insurers
Finseca
Financial Services Institute
Indexed Annuity Leadership Council
Institute for Portfolio Alternatives
Insured Retirement Institute
National Association for Fixed Annuities
National Association of Insurance and Financial Advisors

cc: Senator Bernie Sanders, Chairman of the Senate Committee on Health, Education, Labor and Pensions
Members of the Senate Committee on Health, Education, Labor and Pensions