JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

MAXINE WATERS, CA, RANKING MEMBER

August 07, 2017

Timothy D. Hauser
Deputy Assistant Secretary for Program Operations
Office of Exemption Determinations
Employee Benefits Security Administration
Attn: D-11933
U.S. Department of Labor
Suite 400, 200 Constitution Avenue, NW
Washington, D.C. 20120

Re: Department of Labor Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (RIN) 1210-AB82)

Dear Mr. Hauser:

The House Financial Services Committee's Capital Markets, Securities, and Investment Subcommittee , on which I serve as Chairman, recently convened a hearing on July 13, 2017, titled the "Impact of the DOL Fiduciary Rule on the Capital Markets"[1] to examine the effects of the Department of Labor's (DOL) fiduciary rule[2] after its partial implementation date of June 9, 2017.[3] As part of that hearing, the Subcommittee received testimony and learned:

- The DOL fiduciary rule will both raise costs and reduce access to retirement advice for Americans with low and middle incomes, and create a complicated and burdensome regulatory environment that will ultimately only benefit plaintiff's attorneys.
- The DOL should further delay the rule before the full implementation date of January 1, 2018.
- The Securities and Exchange Commission (SEC) is the expert regulator of the standards of conduct with which broker-dealers must follow when providing investment advice to their customers. A best-interest standard regulated by the SEC for broker-dealers that applies to all customer accounts, both investment and retirement, is a comprehensive and more appropriate regulatory framework than the regime created by the DOL rule.

In addition to this recent hearing, since 2011, the Financial Services Committee has carefully examined in numerous hearings the standards of care for broker-dealers and the SEC's oversight of such standards a debate which began with the inclusion of Section 913 of the Dodd-Frank Act. Regulatory and

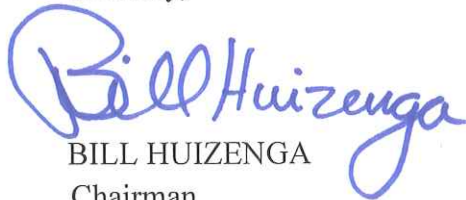
[1] House Committee on Financial Services, Hearing Entitled "Impact of the DOL Fiduciary Rule on the Capital Markets" (Jul. 13, 2017).
[2] 81 Fed. Reg. 20946 (Apr. 8, 2016).
[3] *See* Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice; Proposed Rule 82 FR 16902 (Apr. 7, 2017)

legal uncertainty inhibits the ability of broker-dealers to provide advice to their customers and the development of innovative products and services. The breadth of the DOL rule contributes to that uncertainty, and therefore the SEC should be the lead regulator on this issue. To that end, the DOL should allow the SEC to develop and set the standard of care for the broker-dealers subject to the SEC's jurisdiction, oversight and more than 80 years of expertise.

Consequently, I strongly urge the DOL to prevent further disruptions in the retirement advice market which are consistent with President Trump's executive memorandum signed on February 3, 2017.[4]

As part of the request for comment on the DOL's final fiduciary rule, please find attached written testimony submitted by witnesses from the Subcommittee's July 13, 2017 hearing.

Sincerely,



BILL HUIZENGA
Chairman
Subcommittee on Capital Markets,
Securities, and Investment

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[4] *See* Presidential Memorandum on Fiduciary Duty Rule (Feb. 3, 2017), *available at* https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule.

STATEMENT OF THE AMERICAN COUNCIL OF LIFE INSURERS

BEFORE THE HOUSE COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON CAPITAL MARKETS, SECURITIES, AND INVESTMENT

ON THE IMPACT OF THE DOL FIDUCIARY RULE ON THE CAPITAL MARKETS

THURSDAY, JULY 13, 2017

STATEMENT MADE BY MARK HALLORAN, SENIOR DIRECTOR,

HEAD OF INDUSTRY AND REGULATORY STRATEGY, TRANSAMERICA

Chairman Huizenga, Ranking Member Maloney, and members of the Committee, I am pleased to present this statement expressing the views of the American Council of Life Insurers on the impact of the DOL Fiduciary rule on the capital markets. Thank you for the opportunity to testify before you today.

My name is Mark Halloran and I am the Senior Director, Head of Industry and Regulatory Strategy at Transamerica. Transamerica is one of the nation's leading providers of financial services and insured products, including annuities, to America's families and individuals working to build a solid financial foundation. For the past several years I have worked with the ACLI and many of its member companies on the difficult challenges confronting both retail investors and the financial professionals who serve them under the U.S. Department of Labor's Fiduciary Regulation.

The American Council of Life Insurers is a Washington, D.C.-based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 95 percent of industry assets in the United States.

ACLI supports reasonable and appropriately tailored rules that require all sales professionals to act in the best interest of their customers. Prudential regulators such as the

SEC and state insurance regulators, not state courts and the plaintiffs' bar, are best positioned to apply and enforce a best interest standard of care. To meet their financial and retirement security needs, America's savers and retirees deserve rules that ensure continued access to a wide variety of retirement product offerings, retirement savings information and related financial guidance from financial professionals acting in their best interest.

ACLI supports the Discussion Draft being reviewed by the Subcommittee at today's hearing. ACLI thanks Chairman Huizenga, Representative Ann Wagner, and other members of the Committee for their strong leadership on this issue. The Discussion Draft would establish a "best interest" standard of conduct to govern the relationship between broker-dealers and their individual representatives with retail investors.

Perhaps most importantly, the best interest standard of conduct under the Discussion Draft would apply to the totality of the relationship between consumers and financial professionals; not just the one dimension of the relationship that involves ERISA plan or IRA assets. The bill also installs important statutory safeguards to permit transaction-based financial professionals, including broker-dealer registered representatives and insurance agents, to continue to offer products and services to retail investors under traditional compensation models. These safeguards would effectively preserve retail investor access to information, freedom of choice over how to pay for financial advice and a robust, competitive marketplace for insured retirement solutions. The Discussion Draft at long last harmonizes the multi-faceted bodies of law and regulation applicable to the sale of insurance and annuity products at the retail level.

My testimony today focuses on three key areas. First, I will briefly review the clear and present danger that the Department of Labor's Fiduciary Regulation poses to the financial well-being and retirement security of average working Americans. Second, I will address how the Discussion Draft addresses and resolves that threat by preserving retail investor freedoms of access and choice under a coherent "best interest" standard of conduct. Third, I will offer some final thoughts on why we at ACLI believe the Discussion Draft approach brings much needed regulatory harmony, stability, and certainty to the marketplace for retail investment advice.

The Department of Labor's Fiduciary Regulation Harms Middle Income Savers and Limits Consumer Choices

However well-intentioned it may be, the DOL's Fiduciary Regulation poses a very real threat to the financial well-being and retirement security of working Americans. It is difficult to overstate the magnitude of that threat. The continued availability of what today is taken for granted – a vibrant and competitive marketplace for insured retirement solutions, readily available access to cost effective financial advice and true consumer choice about how to pay for that advice – is seriously jeopardized under the DOL's approach.

The core problem with the DOL Regulation is that it re-characterizes virtually **all** financial services and product sales activity directed to employer-sponsored retirement plans, including participants, or to individual retirement accounts ("IRA's"), as "fiduciary" conduct

within the meaning of ERISA and the Internal Revenue Code. That sweeping approach is enormously problematic for distributors of insurance and annuity products. ERISA's fiduciary standard, which strictly prohibits financial conflicts of interest and the receipt of payments (including sales commissions) from third parties in connection with a recommended transaction, renders the compensation structures that are best tailored for insurance and annuity sales distribution organizations illegal unless and except to the extent that a prohibited transaction exemption is available to cover the transaction.

The Department of Labor has devised a prohibited transaction exemption known as the "Best Interest Contract" or "BIC" Exemption that, in theory, would exempt the receipt of sales commissions and other incentives by fiduciary advisers. As a practical matter it effectively forbids the use of sales commissions as a manner of payment. The conditions of the BIC Exemption are so exceedingly complex and technical as to present serious questions as to whether they can realistically be met. Moreover, the BIC Exemption contains an inherent, deeply-rooted bias that strongly favors the provision of investment advice on a fee for service basis and strongly disfavors the provision of products and services by those who are compensated on a commission, or transaction-based basis. It has retained this bias even though commentators have warned DOL that for all but the wealthiest segment of the retail investor community, fee-based advice is frequently uneconomical and unaffordable.

To make matters worse, the BIC Exemption has been intentionally designed to expose distributors of financial services and products to a significant risk of widespread private plaintiffs' class action claims.

The fee-based advice model that the DOL Regulation favors may meet the needs of active traders and the very wealthy, but not the needs of "buy and hold" investors or purchasers of annuity products, which are designed for long term retirement goals. Fee-based arrangements often carry hefty account minimums (typically between $100,000 and $250,000), and rarely include annuities, as these products do not typically necessitate continual advice and investment management. Retail investors with small or mid-sized accounts need continued access to experienced, knowledgeable transaction-based financial professionals who can inform them about the guaranteed lifetime income features available through annuity products and assist in fitting those products to individual investor needs.

Under the DOL Regulation, an advice gap has developed for small and medium retirement account holders who do not meet higher account minimums for fee-based arrangements. Small and medium retirement account holders are consequently left without any advice. For these savers, the DOL inappropriately relies on computer generated asset allocation platforms, commonly referred to as "Robo-Advisers". Yet, the DOL concedes that these automated asset allocation services likely do *not* offer the same benefits as financial professionals -- benefits that include encouraging greater savings, responding to client-specific questions, and dissuading emotional investing, such as liquidating assets during a downturn like the 2008 market crash. The DOL has failed to explain how computer-generated asset allocation platforms, given these crucial limitations, can serve as an adequate substitute for a financial professional.

Less advice from financial professionals can contribute to reduced savings on the part of working Americans and diminished retirement security for retirees in need of guaranteed lifetime income through annuities.

The Discussion Draft Protects the Interests of Retail Investors

The Discussion Draft takes a common sense approach to addressing and resolving the threats posed by the DOL Regulation and by doing so preserves access to investment advice for average investors and their families. It amends certain provisions of the Securities Exchange Act of 1934 (the "34 Act"), the Dodd Frank Act, ERISA, and the Code to weave together a coordinated and complete "best interest" standard for transaction-based financial professionals that protects all dimensions of the retail investor client relationship, including but not limited to the portion of the relationship that concerns ERISA and IRA assets. By doing so, it renders moot the exceedingly complex, highly technical conditions of the BIC Exemption that today threaten to stifle retail investor freedoms of choice and access.

At the centerpiece of the bill is an amendment to the '34 Act that enshrines a "best interest" standard governing the delivery of investment recommendations by broker-dealers and their individual representatives to retail customers. Best interest recommendations would need to reflect reasonable diligence, care, skill, and prudence in light of the client's investment profile.

The Discussion Draft contains disclosure rules to complement the new standard. At the outset of the customer relationship, broker-dealers would need to clearly and concisely disclose the type and scope of the services to be provided, the standard that may apply to the relationship, the types of compensation that the broker-dealer and its representatives may receive, and any material conflicts of interest. Importantly, the bill safeguards the legal validity of traditional, transaction-based compensation structures by providing that the receipt of sales commissions, recommendations of principal transactions, recommendations of affiliated, unaffiliated or proprietary products or services, or limitations on the range of products and services offered would not, in and of themselves, constitute violations of the '34 Act's best interest standard of care.

Since the Discussion Draft amends the federal securities laws, the new "best interest" standard would govern the totality of a broker-dealer's securities relationship with a retail investor; not just the portion of the relationship that pertains to ERISA plan and IRA recommendations. In regards to ERISA plan and IRA recommendations, the Discussion Draft would stay the hand of DOL by forbidding the promulgation of any regulations defining the circumstances under which a person is deemed to be a "fiduciary" if those regulations would impose any obligations on a broker-dealer or its representatives or on a life insurance company or its agents that is either inconsistent with or in addition to the obligations set forth under the '34 Act. In addition, the ERISA statute and its parallel Internal Revenue Code provisions would be amended to add a new statutory prohibited transaction exemption to cover any recommendations made by a broker-dealer or its registered representatives that are consistent with the '34 Act standard. Similarly, the exemptions would be available to registered investment advisers, banks, and other financial institutions who comply with

standards substantially similar to the '34 Act standard. This assures a level playing field for all financial professionals and financial institutions.

Life insurance companies and their agents frequently distribute annuity and other insurance products through registered broker-dealer organizations. To that extent, the ERISA protections afforded by the Discussion Draft would be directly available. To cover those instances where annuity and insurance products are distributed other than through a broker-dealer, the same prohibited transaction exemption would be applicable where the manufacturer or distributor of insurance products adopts and implements practices on a nationwide basis that meet or exceed the '34 Act's standard and substantially complies with that standard.

The Discussion Draft's straightforward approach protects the interests of retail investors. Sales recommendations of securities and annuity products will reflect the investors' best interests, in light of their customer profiles. At the same time, the preservation of transaction-based compensation structures will ensure that consumers have continued access to information and advice and freedom of choice about how to pay for advice.

The Discussion Draft Facilitates Coordination By Prudential Regulators and Harmonization of the Regulation of Advice to Retail Investors

The regulatory environment governing the delivery of investment advice to retail investors, which has already been de-stabilized by the DOL Regulation, threatens to become even more fractured unless Congress takes action. The bill sensibly places responsibility for issuing regulations in the hands of the primary regulators, the SEC and state insurance regulators. The bill would also place a statutory obligation on the SEC to coordinate and cooperate with state insurance regulators.

Conclusion

The Discussion Draft's establishment of a unified standard of care to govern the delivery of financial advice to the retail investor community, its identification of the SEC as the lead regulator for purposes of implementing that standard for securities, and emphasis on coordination and cooperation with state insurance regulators reflects good policy, will stabilize the marketplace for the delivery of retail financial products and services to consumers and will benefit consumer interests by restoring freedom of access and choice.

Thank you for the opportunity to testify today and for your consideration of the views of ACLI.

Impact of the DOL Fiduciary Rule on the Capital Markets

United States House of Representatives

Committee on Financial Services

Capital Markets, Securities, and Investment Subcommittee

Douglas Holtz-Eakin, President *

American Action Forum

July 13, 2017

*I thank Meghan Milloy for her assistance in preparing this testimony. The views expressed here are my own and not those of the American Action Forum.

Chairman Huizenga, Ranking Member Maloney, and members of the Subcommittee, thank you for the opportunity to appear today and share my views on the impact of the Department of Labor's (DOL's) fiduciary rule on capital markets. And thank you for your efforts to repeal the rule and to enact a rule that is more workable and effective for both consumers and the retirement advice market.

When the fiduciary rule was finalized in 2016, it was (and still is) the most expensive regulation that year, with $31.5 billion in total costs and $2 billion in annual burdens[1] on the companies– many of which are small businesses – and advisors it affects. Although the rule has not yet been fully implemented, research from the American Action Forum (AAF) has found that several major companies have already left part of the brokerage business or are drawing down their business and/or switching to a fee-based arrangement. From these companies alone, reported compliance costs have already topped $100 million, affecting 92,000 investment advisors, $190 billion in assets, and at least 2.3 million consumers.[2]

Advocates for DOL's fiduciary rule argue that it is necessary to prevent bad actors from prioritizing their own interests above those of their clients. They argue that without it, consumers will be short-changed in their retirement savings by being steered into investments that don't work for them. On its face, a fiduciary standard is widely supported throughout the industry. The only issue is the best way to implement a standard. The problem with DOL's fiduciary rule is not the requirement to act in a client's best interest, but the dissuasion of commission-based accounts and the imposition of the Best Interest Contract (BIC) Exemption, which exposes financial advisors to the risk of litigious clientele.

Despite its length and complexity, the fiduciary rule can be broken down into two basic paths of compliance for advisors: 1) Moving to a primarily fee-based model or 2) Entering into the BIC with clients. The consequences resulting from each of these options are explored in detail below.

1. Moving to a primarily fee-based model

Created by the Employee Retirement Income Security Act of 1974 (ERISA), individual retirement accounts (IRAs) have become an integral part of Americans' retirement saving strategies. Based on data from the Internal Revenue Service (IRS), by the end of 2014, 57.3 million Americans owned at least one IRA, all totaling nearly $7.3 trillion in assets.

[1] See, http://regrodeo.com/?year%5b0%5d=2016®ulation=Definition%20of%20the%20Term%20%E2%80%9CFiduciary%E2%80%9D;%20Conflict%20of%20Interest%20Rule--2016--31500000000

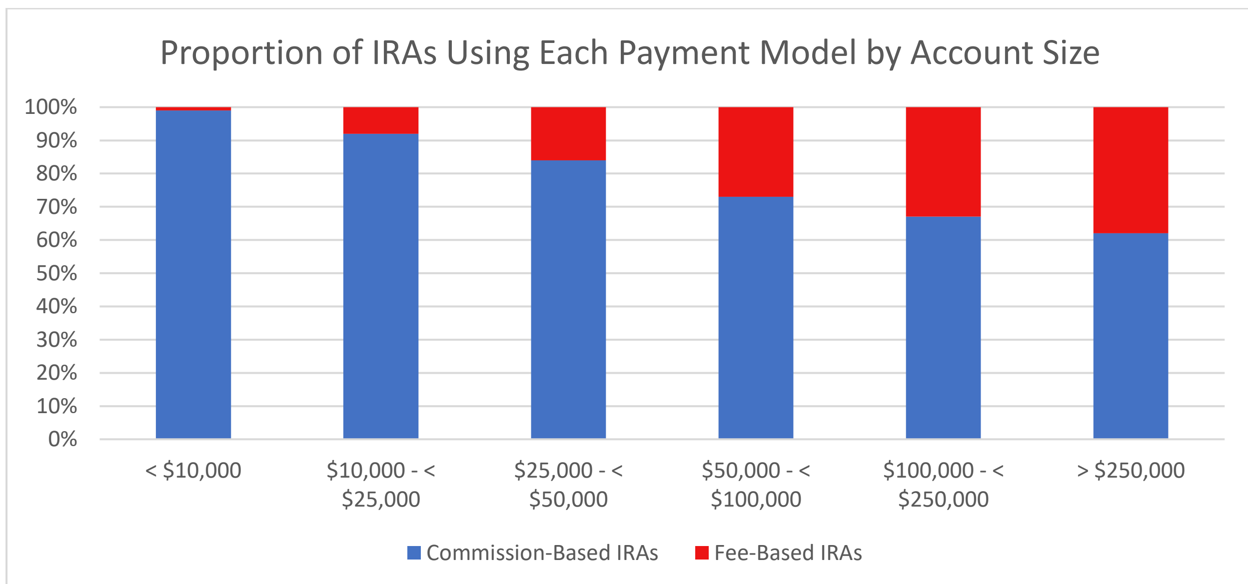
[2] https://www.americanactionforum.org/insight/fiduciary-rule-already-taken-toll-100-million-costs-fewer-options/

Table 1. Taxpayers with Individual Retirement Arrangement (IRA) Plans, by Filing Status and Gender, Tax Year 2014
(All figures are estimates based on samples--money amounts are in thousands of dollars)

Filing status and gender	Number of taxpayers			Taxpayers with IRA accounts reported on Form 5498 or Form 1099-R					
	Total	With pension coverage on Forms W-2 [1]	Eligible to make IRA contributions [2]	Roth conversions [3]		Withdrawals [4]		End-of-year fair market value of IRAs	
				Number of taxpayers	Amount	Number of taxpayers	Amount	Number of taxpayers	Amount
	(1)	(2)	(3)	(10)	(11)	(12)	(13)	(14)	(15)
All taxpayers	**202,530,196**	**71,427,452**	**155,481,150**	**488,827**	**8,255,152**	**17,985,606**	**275,107,505**	**57,279,386**	**7,291,587,418**
Men	98,259,891	36,501,418	79,643,021	272,918	5,326,927	8,939,710	167,122,701	28,146,406	4,483,874,245
Women	104,270,305	34,926,034	75,838,129	215,909	2,928,225	9,045,896	107,984,804	29,132,980	2,807,713,173
Taxpayers filing joint									
returns, total	**110,797,852**	**41,879,949**	**77,554,816**	**367,962**	**6,285,405**	**11,600,461**	**185,056,156**	**40,120,901**	**5,495,436,967**
Men	55,447,186	23,033,568	42,299,478	207,034	4,366,251	6,805,223	134,236,273	21,140,438	3,809,952,218
Women	55,350,666	18,846,381	35,255,338	160,928	1,919,154	4,795,238	50,819,883	18,980,463	1,685,484,749
Taxpayers filing non-joint									
returns, total	**91,732,345**	**29,547,502**	**77,926,336**	**120,865**	**1,969,747**	**6,385,145**	**90,051,348**	**17,158,485**	**1,796,150,451**
Men	42,812,705	13,467,850	37,343,544	65,884	960,676	2,134,487	32,886,428	7,005,968	673,922,027
Women	48,919,640	16,079,652	40,582,792	54,981	1,009,071	4,250,658	57,164,920	10,152,517	1,122,228,424

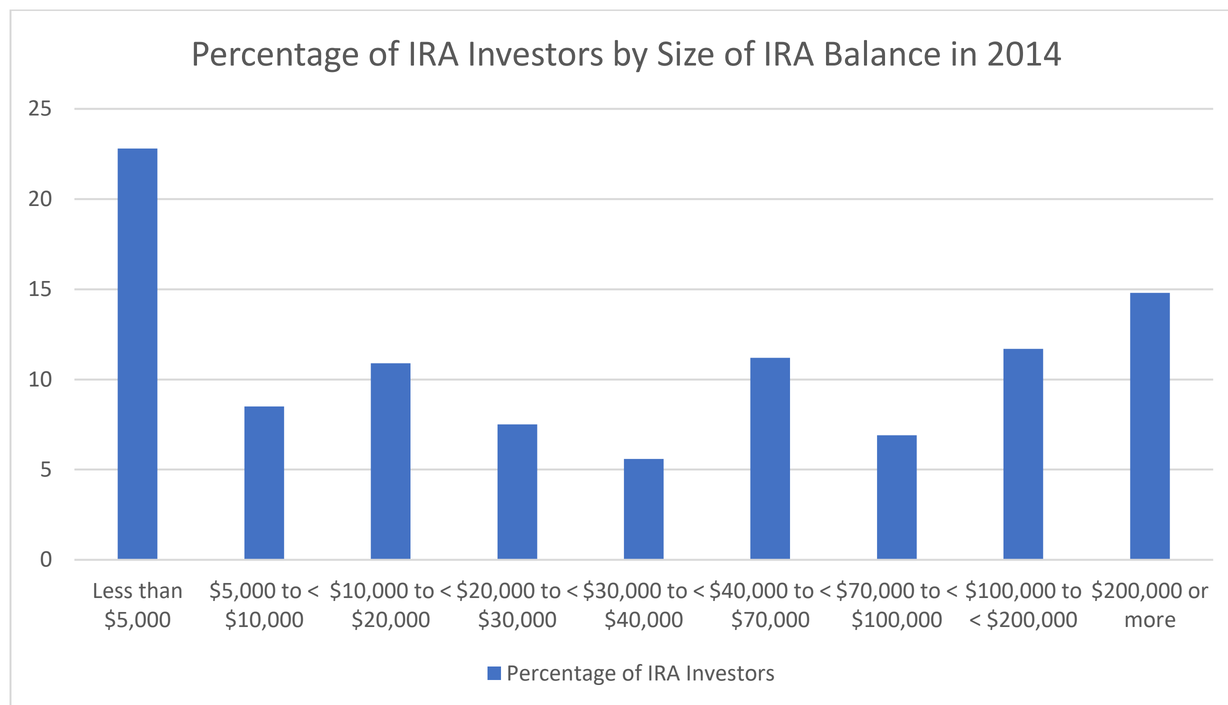
[1] Number of taxpayers with pension coverage is determined from Form W-2 box 13, which indicates participation in a retirement plan.
[2] Those individuals qualifying under Federal Income Tax law to make deductible or non-deductible contributions to a traditional IRA and/or Roth IRA plan.
[3] Owners of traditional IRAs were able to convert them to Roth IRAs as long as they met the income limitations for making Roth IRA contributions. Under certain circumstances, SEP or SIMPLE IRAs could also be converted to Roth IRAs; however, these amounts could not be identified separately for the purpose of these statistics.
[4] Withdrawals are reported on Form 1099-R; does not include withdrawals for the purpose of rollovers to other IRA accounts if the transfer was made by the trustee; Roth IRA conversions are shown separately.
For additional explanations, see Bryant, Victoria and Jon Gober, "Accumulation and Distribution of Individual Retirement Arrangements, 2010", SOI Bulletin, Fall 2013, Volume 33, Number 2.
Note: Details may not add to total due to rounding.
Source: Matched file of Forms 1040, 1099-R, and 5498 for Tax Year 2014.
IRS, Statistics of Income Division, Individual Retirement Arrangements Study, September 2016.

In 2011, a survey of 25.3 million IRA accounts[3] found that a large majority of IRA investors opted for a commission-based instead of a fee-based arrangement, and that those investors with lower IRA account balances opted for a commission-based arrangement at higher rates than those with higher account balances as seen in the chart below.[4]



[3] https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32/oliverwymanreport.pdf
[4] Source, Oliver Wyman Study, 2011

In a 2014 study, the Investment Company Institute (ICI) found that nearly 23 percent of the 57.3 million Americans with IRAs have balances less than $5,000, over 42 percent have less than $20,000, and almost 74 percent have less than $100,000.[5]



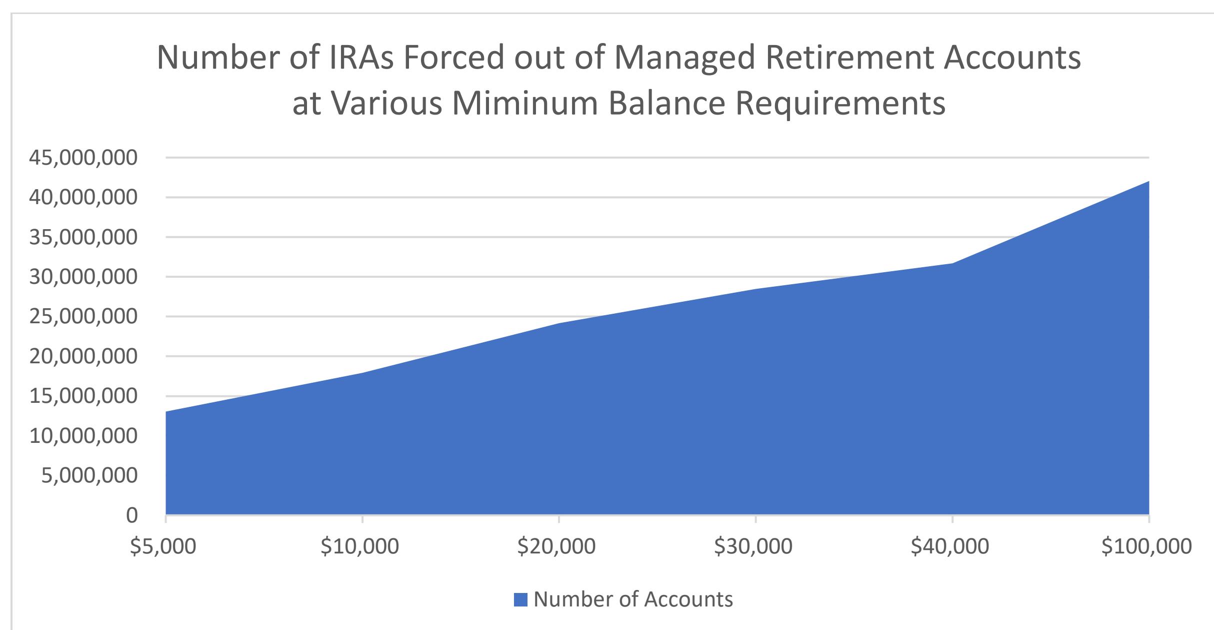
All of this data is important in understanding the fiduciary rule's effects on consumers. The fiduciary rule will force many investment advisors to move away from a commission-based model to a fee-based model in order to avoid any possibility of an apparent conflict of interest. In fact, some firms have already announced[6] that they are doing away with their commission-based IRAs entirely. This presents two major problems for consumers. First, fee-based accounts are much more expensive for investors. As Morningstar explains[7], fee-based accounts yield upwards of 50 percent more revenue for firms than commission-based accounts because "[f]ee-based accounts are already under a fiduciary standard of care that is defined by the Securities Exchange Commission (SEC). This SEC fiduciary standard requires increased monitoring, legal liability, and typically is accompanied with a higher service level than commission-based accounts, so clients are charged more." By way of background, the reason DOL is involved in a developing a fiduciary standard is because of its oversight of ERISA and the retirement plans under it, which are the only ones covered by this rule.

One study found[8] that advisors earn 0.54 percent on commission-based accounts versus 1.18 percent on fee-based accounts. With nearly $7.3 trillion of assets in IRAs, that's a difference

[5] Source: ICI's IRA Investor Database
[6] https://www.ml.com/articles/delivering-a-higher-standard-of-care.html
[7] http://ibd.morningstar.com/article/article.asp?id=733096&CN=brf295,http://ibd.morningstar.com/archive/archive.asp?inputs=days=14;frmtId=12,%20brf295
[8] http://www.pricemetrix.com/cms/wp-content/uploads/PriceMetrix-Insights_Transitioning-To-Fee_English.pdf

between consumers paying a total of $39.4 billion or $86 billion in fees each year. This is an average of $813 per IRA account holder – an unaffordable amount for many.

The second major problem is that because fee-based accounts mean increased monitoring, liability, and servicing, advisors will be forced to require higher minimum balances in order to remain financially viable. For example, Edward Jones will require[9] investors to have $100,000 in retirement assets to open a fee-based IRA, whereas other firms will require[10] minimum balances of $20,000 or $30,000. Looking back at the third chart above, even with a minimum account balance requirement of $20,000, over 42 percent of IRA holders will be forced out of managed retirement accounts and almost half of all IRA holders will be forced out if that minimum is increased to $30,000. Even with a minimum balance requirement of just $5,000, over 13 million accounts will fail to qualify for managed advice.



In 2013, the Retail Distribution Review initiative (RDR) was implemented in the United Kingdom. It's not an exact match of DOL's fiduciary rule, in that it explicitly forbids commission-based accounts, but it is a close-enough comparison to merit attention. Since the RDR was implemented, several studies[11] have looked at its effects on investment advisors and their clients. Without getting bogged down in the details because it is, in fact, an imperfect comparison, I would be remiss to ignore them completely.

The UK's Financial Conduct Authority (FCA) conducted a review in 2016 of the changes in the retirement advice market as a result of the RDR. One of the more telling findings is that "over

[9] http://time.com/money/4459130/edward-jones-bans-funds-etfs-in-iras/
[10] https://www.merrilledge.com/pricing#tab3
[11] See, http://www.cass.city.ac.uk/__data/assets/pdf_file/0016/202336/The-impact-of-RDR-Cass-version.pdf and https://www.fca.org.uk/publication/corporate/famr-final-report.pdf and https://www.fsb.co.za/NewsLibrary/FSB%20Retail%20Distribution%20Review%20Status%20as%20at%20December%202016.pdf, for example.

the last two years, the proportion of firms who ask for a minimum portfolio of more than £100,000 has more than doubled, from around 13 percent in 2013 to 32 percent in 2015. The FCA's recent survey of advisors also supports this, suggesting that 45 percent of firms very rarely advise customers on retirement income options if those customers have small funds (i.e. less than £30,000) to invest."

Another review of the RDR's impact on the UK's financial advice market conducted by the Cass Business School at the City, University of London found that the enhanced requirements on advisors would drive advisors out of the investment advice market completely. "Advisor numbers fell from 40,000 at the end of 2011 to 31,000 by the start of 2013: we find that the remaining financial advisors are unduly optimistic about their own business prospects in the RDR world." Further, they found that "the average advisor expects to garner around £1,500 from each of roughly 150 clients to sustain the £220,000 of gross revenue that they tell us they require to function as a business. With fees averaging approximately 1 percent of assets under advisory this means that the average client will need to have around £150,000 in investible assets on average."

In sum, the fiduciary rule will force many IRA investors into fee-based accounts which, at a minimum, will noticeably increase the amount they pay their advisor each year, and, at a maximum, will cut them out of the investment advice market completely. Considering that the IRAs with the lowest account balances will be hit the hardest, it's reasonable to conclude that the fiduciary rule will do the most harm to those low- to middle-income retirement savers it was intended to protect.

2. Entering into the BIC with clients

The second option presented to investment advisors by the fiduciary rule is to enter into the BIC with their clients. Like the rule itself, on its face, the BIC sounds good – a best interest contract between advisor and advisee. But in reality, the BIC will open the door to excessive litigation, especially class action lawsuits. Specifically, the BIC exemption purports to[12] "allow entities such as registered investment advisors, broker-dealers, banks and insurance companies…and their employees, agents and representatives…that are ERISA or Code fiduciaries by reason of the provision of investment advice, to receive compensation that may otherwise give rise to prohibited transactions as a result of their advice to plan participants and beneficiaries, IRA owners and certain plan fiduciaries…"

In other words, the BIC exemption allows advisors to provide investment advice that may seem conflicted as long as they enter into a contract with their client stating that it is in the client's best interest, and, if the client decides that it's not, the client can sue them for breach of contract. And while it does allow for the inclusion of mandatory arbitration clauses, the BICs cannot waive the client's ability to file or participate in a class action lawsuit.

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[12] https://www.federalregister.gov/documents/2016/07/11/2016-16355/best-interest-contract-exemption-correction

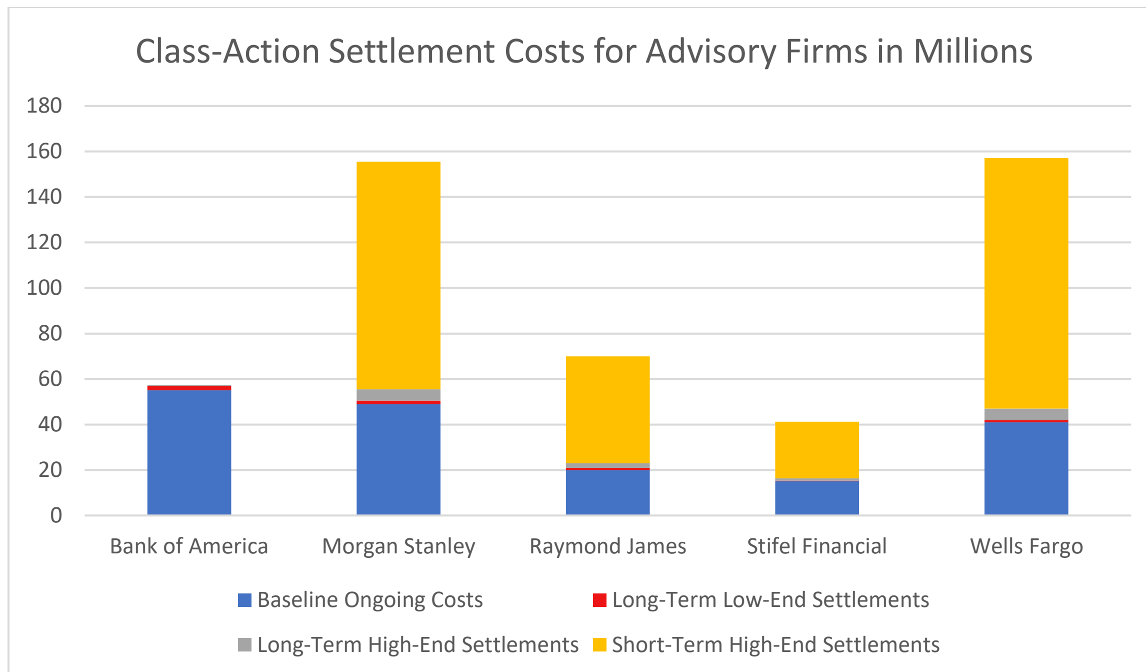
In 2016 alone, consumers filed nearly 4000 arbitration cases[13] with the Financial Industry Regulatory Authority (FINRA) alleging some wrongdoing by broker-dealers. However, yet only 158 cases were decided in favor of the consumer. This means many broker-dealers spent significant time and money defending themselves, and perhaps unnecessarily. One could expect BIC litigation to fall along the same lines, but with the added threat of class action lawsuits and, at times, their resulting settlements.

One study estimated the costs[14] of class action lawsuits under the BIC using historical restitution data from wealth management firms, claims on implied errors and omissions insurance policies, DOL monetary estimates, and previous settlements on retirement plan class actions. It found that the long-term costs for class action lawsuits is between $70 million and $150 million each year – in addition to DOL's estimate of $1.5 billion in ongoing costs. The study also found that the near-term class action settlements could exceed the long-term estimates by a multiple "as firms try to figure out how to determine, demonstrate, and document best interest." Some strategic litigation could force targeted investment advisors into some extremely costly settlements – not as a result of their malpractice, but as a result of gray area in the law of the fiduciary rule and the BIC. The same study estimated that near-term class action settlements could decrease the operating margins on commission-based IRAs by 24 to 36 percent.

In an effort to curb potential litigation costs, investment advisors may purchase liability insurance. DOL's cost estimates[15] identify the increase in premiums at approximately 10 percent, or $300 per year, but independent studies estimate that number to be much higher. In an Oxford Economics study[16], researchers found that the potential cost of litigation stemming from the fiduciary rule was the greatest concern to investment advisors, largely because it is the area of the greatest unknown. Due to that uncertainly, the study does not give an exact estimate of the increase in the cost of insurance, but it does say, "importantly, from an economic perspective, the full cost of all this may be far larger than the ultimate amount spent on litigation – although that could end up being quite large as well. The cost of the uncertainty caused by the proposed rule could be far greater, as firms waste resources and forgo opportunities because of the risk of litigation…DOL assumes that Error and Omission insurance costs for some representatives will increase by 10 percent. This appears to be a wild underestimation of the potential costs of litigation, and the uncertainty it fosters as a result of the proposed rule."

Morningstar estimates that, in the short-term, class action settlements could double the costs of the fiduciary rule for firms.

[13] https://www.finra.org/arbitration-and-mediation/dispute-resolution-statistics
[14] http://news.morningstar.com/articlenet/article.aspx?id=793268
[15] https://www.federalregister.gov/documents/2016/04/08/2016-07924/definition-of-the-term-fiduciary-conflict-of-interest-rule-retirement-investment-advice#h-10
[16]https://d2rpq8wtqka5kg.cloudfront.net/311980/open20150818044300.pdf?Expires=1491316097&Signature=eM4yKMJvLWy2Js24XLrWtFXiTWfuyaz2dI2dH7opibHCVrFh0V7Tv5fZrJrH48C1CYoqWgUf3eyLa0d7NKytou20LIpKe4stR-hasRYiNCrj5F5spBLqw-PpKdu-WGZwb38TLkT-~~YzE9-EtdqwTNkw11R1A7BVUyNkFAYsGmmVnOMYoXA0x~S86-6lyjPAHzo1HFetJV9CGNoC7FvZDnBGOVbMwtn6lQdQB9MlAYy7GrSDvg5K7-JMymZj1MzZR51vIcLcraAqtGuqkytFTqFKAjpbskpeEXnGuikBVp1cJ34geCQo9xWjbIs9tjpnRJ5ekRjYMcs68SsgMNsVRg__&Key-Pair-Id=APKAJVGCNMR6FQV6VYIA



Conclusion

At the end of the day, the fact remains that the fiduciary rule is the most expensive regulatory action of 2016 and the second most expensive non-environmental rule since 2005. Even DOL's own conservative compliance cost estimate is astronomical.

Based on the above data, the fiduciary rule has the potential to increase consumer costs by $46.6 billion, or $816 annually per account, in addition to the $1500 in duplicative fees for retirement savers that have already paid a fee on their commission-based accounts that move the same investments into a fee-based account. Worse, based on a minimum balance requirement of $30,000, the fiduciary rule could force 28 million Americans out of managed retirement accounts completely. Add that to $150 million in annual litigation costs and operating margins reduced by 24 to 36 percent, which will ultimately be passed on to consumers, or will force firms out of the market, decreasing the supply of advice.

In short, the DOL's fiduciary rule will end up doing much more harm than good. Despite its good intentions, the costs it imposes – especially to low- and middle-income consumers – are far too high to justify implementing the rule as it is currently written.

Thank you, and I look forward to answering your questions.

Written Testimony of Jerry Lombard, the President of the Private Client Group at Janney Montgomery Scott, LLC

On behalf of the Securities Industry and Financial Markets Association

before the U.S. House of Representatives

Committee on Financial Services

Subcommittee on Capital Markets, Securities, and Investment

Hearing entitled "Impact of DOL Fiduciary Rule on the Capital Markets"

July 13, 2017

Chairman Huizenga, Ranking Member Maloney, and distinguished members of the Subcommittee, I am Jerry Lombard, the President of the Private Client Group at Janney Montgomery Scott, LLC. I greatly appreciate the opportunity to testify today on behalf of the Securities Industry and Financial Markets Association (SIFMA)[1] and share our perspective on the best path forward to establish a best interest standard for the broker dealer industry. SIFMA represents the broker dealers, banks and asset managers who play an active role in the capital markets and are dedicated to promoting investor opportunity, access to capital, and an efficient market system that stimulates economic growth and job creation. We are grateful for this Committee's willingness to consider legislation that would allow the Securities and Exchange Commission (SEC) to establish a best interest standard for broker dealers that would create a high standard of care for retail customers across all accounts.

On June 9, 2017, some key provisions in the Department of Labor (DOL) fiduciary rule became applicable, and as an industry we are beginning to see its harmful impact on America's retirement savers - limiting product choice and access to advice, while raising costs. At Janney, we are already experiencing many of these issues. Our customers and advisors are very confused by the phalanx of new DOL rules applying to retirement plans. They do not understand why there are now two sets of rules one for retirement accounts and one for taxable brokerage accounts. Since June 9th customers are restricted from making certain investments. Upwards of 10,000 of our customer retirement accounts will be relegated to a "no advice service" desk –as they are too small for the risks imposed by the DOL or too costly to place in an advisory account that would remove the supposed conflicts the DOL is trying to regulate. How switching small retirement savers from a full-service advisor to a "no advice" service desk is in their best interest, I will never understand.

It is the position of SIFMA that the right answer for investors is a consistent best interest standard that could apply across all types of accounts, but does not have the additional onerous conditions created by the DOL rule. A best interest standard done right by the SEC, the expert agency responsible for broker dealer standards of conduct, would provide protection for retail customers without a bifurcated compliance regime imposed on the same market participants by different regulators.

We are greatly encouraged by the SEC's June 1st request for public comment on standards of conduct for investment advisers and broker dealers. It is SIFMA's intention to share with the SEC our desire that they consider establishing a best interest standard for broker dealers that mirrors the elements of the Impartial Conduct Standard under the DOL Rule, but unlike the DOL Rule, would apply across all broker dealer accounts, not just retirement accounts. For that reason, the DOL should at a minimum delay the January 2018 applicability date to allow the SEC to lead the effort to put in place a standard that works for all accounts.

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[1] "SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $18.5 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org."

Congresswoman Wagner's legislative draft provides this path forward by establishing a SEC applied principles-based standard to ensure that all broker dealer recommendations about securities are driven by the best interest of the retail customer. Specifically, the Suitability Rule would be amended to provide that when making a 'recommendation' to a 'retail customer' a broker dealer shall act in the best interest of such customer at the time the recommendation is made. Further, the recommendation shall reflect the 'reasonable diligence' and the reasonable care, skill, and prudence that a registered representative would exercise based on the 'customer's investment profile.'

We firmly believe that Congresswoman Wagner's approach could provide a number of significant regulatory efficiency and investor protection benefits which would:

- enhance the existing suitability obligation under FINRA rules, building upon them to create a heightened and more stringent best interest standard of conduct for the benefit of retail customers;

- apply across all securities recommendations made to retail customers in all broker dealer accounts (not just limited to IRA accounts);

- build upon, and fit seamlessly within, the existing and long-standing securities regulatory regime for broker dealers, coupled with robust examination, oversight, and enforcement by the SEC, FINRA and state securities regulators; and

- be akin to, and well aligned with, the Investment Advisor standard under the Advisers Act insofar as the new standard would include a duty of loyalty and a duty of care, and an obligation to manage investment costs, and would require up-front disclosure to the customer of important information.

Thus, we greatly appreciate Congresswoman Wagner's work on this legislative discussion draft, and we look forward to continuing to work with her and this Committee on language that ensures the best interest standard established in the bill operates in harmony and consistency with all existing standards of conduct, including the current broker dealer, Investment Advisor, and DOL Rule regulatory frameworks, as well as any future rulemaking by the SEC or FINRA.

In doing this, we will help relieve America's retirement savers from the burdens that have arisen as a consequence of the DOL's misguided rule.

Thank you.

VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS

AND INDEPENDENT FINANCIAL ADVISORS

Testimony of
David Knoch, CIMA
President
1st Global
and
Member, Board of Directors
Financial Services Institute

Before the
United States House of Representatives Committee on Financial Services
Subcommittee on Capital Markets, Securities, and Investment

On

"Impact of the DOL Fiduciary Rule on the Capital Markets"

July 13, 2017

Introduction

Good morning, Chairman, Ranking Member and members of the Subcommittee. I am David Knoch, President of 1st Global based in Dallas, Texas. I am a Certified Investment Management Analyst® with nearly 20 years of experience in the financial services industry. 1st Global is the largest independently owned wealth management partner to nearly 400 Certified Public Accountant (CPA) and legal firms across the United States. The company was founded in 1992 by CPAs who believe that accounting, tax and estate planning firms are uniquely qualified to provide comprehensive wealth management services to their clients. 1st Global is a research and consulting partner that provides our affiliated financial advisors with the education, technology, business-building framework, and client solutions that make these firms leaders in their professions.

I am here representing the Financial Services Institute (FSI).[1] I first became involved with FSI in 2005, one year after it was initially founded in 2004, by Dale Brown, the CEO of FSI and Tony Batman, the founder, Chairman and CEO of our firm, 1st Global.

As President of 1st Global and a member of FSI's Executive Committee, I have seen the power of having a voice in Washington, as well as the need for being a pragmatic participant in important conversations impacting our industry. FSI is the only organization advocating solely on behalf of independent financial advisors[2] and independent financial services firms[3], representing the industry's interests before Congress, the SEC, FINRA, NASAA, other federal and state regulators, and, of recent note, the Department of Labor (DOL). FSI engages in the state and federal legislative and regulatory process, working to create a healthy and thoughtful regulatory environment for their members so they can provide affordable, objective advice to hardworking Americans. Since 2004, FSI has successfully promoted a more responsible regulatory environment through advocacy, education, and public awareness, including on key programs to improve financial literacy and prevent elder abuse in communities across the nation.

At 1st Global, our purpose is clear: 1st Global exists to enable intentional living.

We believe in the virtue of personal responsibility and that all Americans must be accountable for their actions and must intentionally take total responsibility for all of their

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[1] The Financial Services Institute is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has successfully promoted a more responsible regulatory environment for more than 100 independent financial services firm members and their 160,000+ affiliated financial advisors – which comprise over 60% of all producing registered representatives. We effect change through involvement in FINRA governance as well as constructive engagement in the regulatory and legislative processes, working to create a healthier regulatory environment for our members so they can provide affordable, objective advice to hard-working Main Street Americans. For more information, please visit financialservices.org.

[2] The term "financial advisor" is used to denote registered representatives of broker-dealers, investment advisor representatives of investment advisors, and persons who are dually registered in both capacities.

[3] FSI firm members operate as broker-dealers subject to SEC, FINRA, and state oversight; and registered investment advisers under SEC or state authority.

decisions, the choices they make, the beliefs they carry, and what motivates them to live lives with dignity and humility.

We believe in free enterprise as one significant essence of liberty, and economic freedom is grounded in large part in the opportunities we pursue through our vocations. Creating and building businesses provides opportunities for us and others to pursue happiness and live dignified lives.

We believe in the virtue of moral courage and that we must always morally and courageously do only the right thing for ourselves and our clients, even if this means refusing what could be a lucrative financial opportunity. In addition, we must always boldly advocate for both the nobility of business enterprise and we must advocate for the protections of those who suffer injustice.

We believe that honoring promises is at the core of our successful business. Whether to our partner CPAs and advisors, their clients, or each other, we are dedicated to enabling all individuals to make and keep their important promises.

Lastly, we believe that independence and objectivity are the key to providing the right financial solutions that meet every client's unique financial needs and independent financial advisors are particularly well-situated to provide advice and services to hard-working Americans with a wide range of incomes and needs.

1st Global-affiliated advisors are knowledgeable and professional and, as CPAs, among the most trusted professions in America. In fact, according to a recent Gallup study, accountants are the eighth most trusted profession in America,[4] with 39 percent of respondents indicating that the honesty and ethical standards of individuals in this profession are "high" or "very high." Wealth management is a natural complement to the complex services and high practice standards of CPAs. As evidence of these high standards and "client first" principles of professional care, 93 percent of 1st Global-affiliated advisors are CPAs, Certified Financial Planner® (CFP) professionals, or Accredited Investment Fiduciaries, and as such are already today held to varying levels of fiduciary duty to their clients.

Our Regulatory Environment

Independent financial services firms such as 1st Global play a critical role in American lives. However, the future of the independent firm is in question due to persistently expansive new regulations, such as the DOL Rule, creating an overly complex and increasingly burdensome regulatory environment.

Furthermore, 1st Global-affiliated financial advisors are also unique in terms of the many layers of regulations to which they must comply in order to provide both tax and financial

[4] http://www.gallup.com/poll/187874/americans-faith-honesty-ethics-police-rebounds.aspx

planning services to their clients. As CPAs, our affiliated financial advisors are already subject to a separate and distinct duty to work in their clients' best interest as it relates to their accounting services, which include their wealth management and retirement planning practices.[5] In addition, our CPA financial advisors are also subject to the SEC standards and FINRA's standards of commercial honor and just and equitable principles of trade.

I believe strongly that the DOL Rule adds unnecessary complexity to an already complicated regulatory environment for broker-dealers, investment advisers, financial advisors, and, in the case of 1st Global, CPAs. The DOL Rule's intricate regulatory framework raises new barriers to the availability of professional investment services for millions of Americans. More importantly, the DOL Rule requires already confused investors[6] to understand several standards of care. In fact, the SEC's own study, performed in 2008 by the RAND Corporation, indicates that, "investors typically fail to distinguish broker-dealers and investment advisers along the lines that federal regulations define. Despite their confusion about titles and duties, investors express high levels of satisfaction with the services they receive from their own financial service providers."[7]

Furthermore, I believe that, whether through the DOL Rule's intent, or the prevailing public view of the standard of care to which financial advisors should be held, there is no way for anyone who provides a service to another, financial advisor or otherwise, to be "conflict free." It is an impossibility in all businesses. The purpose of business and commerce is to make people's lives better. Any business or person who is selfishly motivated only by profit will perish in a society of fierce market competition to make people's lives better at a fair value which implies a fair price for the services and goods rendered.

Conflicts of interest are inherent in democratic capitalism. Coupled with the temperance of a moral foundation, these conflicts of interest are what make America's commercial society function, make people's lives better, and has created widespread prosperity for employees, consumers, and producers for over 250 years. No alternate system has come close to improving the happiness of mankind as that of democratic capitalism. Every business and every consumer have something to sell or purchase, respectively, thus creating a conflict in each side attempting to maximize their own utility. The elimination of conflicts of interest effectively eliminates the frictional engine of all commerce and thus the engine that improves people's lives. A conflict is inherent in free market capitalistic societies in all services provided and all transactions rendered for profit. The paradox of conflicts of interest is essential to happiness for all. A society's moral foundation, its transparency of the market pricing mechanism, transparency of the inherent conflicts of both producers and consumers, and a fair system of justice can temper the occasional temptations of a few that may contemplate violating the happiness of others.

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[5] See the American Institute of CPAs (AICPA) code of professional conduct *available at* http://www.aicpa.org/Research/Standards/CodeofConduct/DownloadableDocuments/2014December15ContentAsof2016August31CodeofConduct.pdf.

[6] https://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf

[7] Ibid

In a recent *Wall Street Journal* article titled "Why Your Financial Adviser Can't Be Conflict Free," columnist Jason Zweig eloquently wrote, "All financial advisers—like all people who perform a service for anyone else, including journalists—have conflicts of interest. That's true regardless of whether they work for someone else or for themselves, whether they earn fees or commissions, or whether they call themselves 'fiduciaries' who put clients' interests ahead of their own." Neither the DOL's rulemaking, nor any bill proposed by Congress, should expect to eliminate conflicts which are inherent and unavoidable, nor should they propose excessive disclosure of conflicts, which will continue to add to the already problematic epidemic of clients ignoring the enormous volume of regulatory disclosures they are required to read. Instead, a more realistic approach is to require firms and financial advisors to effectively manage conflicts of interest to ensure that investors are aware they may exist and can choose whether to work with the financial advisor or not. Managing conflicts of interest can also assure that the financial advisor is not incentivized to work in their own interest. The more practical approach of managing conflicts of interest can be done in a way that does not diminish customer protection and still effectively protects investors from harm.

FSI supports the Draft Bill because it creates a uniform standard of care enforced by the SEC as the appropriate jurisdictional agency with the necessary expertise, and provides for reasonable and streamlined disclosures as a way to require industry participants to communicate their conflicts. In addition, 1st Global and firms like ours, are already subject to their direct oversight and examination. My testimony will first answer the several questions you asked and then focus on how the Draft Bill will achieve what I believe is the true intention of the DOL Rule, and allow for independent financial advisors to continue to provide advice and investment options that are tailored to their clients' needs, by establishing a simplified, uniform fiduciary standard in the correct agency.

Questions specifically asked by the subcommittee

In light of the partial implementation of the rule on June 9, 2017, please discuss the ability of financial advisers, including broker-dealers, to provide affordable and reliable investment advice to their customers.

The DOL Rule reached its initial implementation date on June 9, 2017, and is now part of the compliance responsibilities of financial services firms like 1st Global. Segments of the financial services industry have expressed concern that the DOL Rule, even with the recent partial implementation, will reduce the willingness and ability of financial advisors to provide affordable retirement advice to their clients, particularly those working with a broker-dealer affiliated advisor. In our view and experience, this concern has merit.

In many cases, the least expensive method for clients to hold mutual funds is to custody them directly with the originating mutual fund company (often referred to as "direct business," "direct-way business," or "retail direct.") Since the beginning of 2016, the number of accounts held by 1st Global clients directly with mutual funds companies has declined nearly 10 percent

and the number of new accounts established dropped 19 percent during the first six months of 2017. We expect this trend to increase and by the end of this year anticipate that the total number of accounts held in these programs will drop 35 percent from 2016 levels. In contrast, we have seen a 123 percent increase in new accounts established using our "level-fee" [8] advisory programs since the beginning of the year. These are accounts offered through our Registered Investment Adviser (RIA), held to a fiduciary standard, supervised by the SEC, and expected to qualify for the level-fee exemption offered by the DOL Rule.

There are two key drivers behind this trend and both are derived from compliance with the DOL Rule. The first driver is our affiliated financial advisors moving the accounts to our fee-based advisory platform where the onerous requirements and legal risks of relying on the Best Interest Contract Exemption (BICE) are eliminated, and supervision of advice and aggregation of clients' assets is more manageable. The second is related to policy actions that 1st Global has enacted in response to both the DOL Rule and a need to modernize our firm.

The DOL Rule has also required us to adopt the "level-fee" fiduciary exemption for our discretionary retirement accounts. These are accounts where the financial advisor has contractual authority to purchase or sell securities in the account without prior notification to clients. While previously we charged reasonable transaction fees, we will be removing these fees and charging a reasonable base platform fee instead. While this will largely be a re-characterization of existing costs to clients, it will nevertheless raise the costs for the median client. Moving from a "pay for what you use" method to a "level-fee" method, in order to qualify for the level fee exemption offered as part of the BICE, as well as by the Impartial Conduct Standards applicable on June 9, will mean that those clients who place trades less frequently will subsidize frequent traders as all clients on the platform will be assessed the same "level fee."

Next, we have been particularly challenged to offer a viable solution for small employer retirement plans, particularly SIMPLE IRAs[9] where account balances can be quite small, as low as $50 for a newly established plan. Even with new "level fee" advisory programs created by 1st Global, we have been challenged to find a viable, cost-effective solution. As a result, many of our affiliated firms are exiting this marketplace and will no longer offer these plans to small business clients, and in some cases, will end their client relationship with existing plans. Since the beginning of 2016, we have seen the number of accounts in these programs decline by just over 20 percent and project that these accounts will shrink from the 2016 levels by 28 percent before the end of this year, and by 41 percent by the end of 2018. These changes will negatively impact small

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[8] A "level fee" is a fee or compensation provided to a financial advisor based on a fixed percentage of the value of the assets or a set fee that does not vary with the particular investment recommended. A level fee also does not include a commission or other transaction-based costs.

[9] Per the IRS, "A SIMPLE IRA plan (Savings Incentive Match PLan for Employees) allows employees and employers to contribute to traditional IRAs set up for employees. It is ideally suited as a start-up retirement savings plan for small employers not currently sponsoring a retirement plan." More information *available at* https://www.irs.gov/retirement-plans/plan-sponsor/simple-ira-plan.

businesses and their employees, who rely on these solutions to offer retirement benefits to their employees before they are large enough to consider the adoption of a 401(k) plan.

Additionally, we have seen our affiliated financial advisors increasing the minimum account size to serve clients and even ending relationships with clients whose accounts are not cost effective to continue to service. This is due in large measure to the increased paperwork and operating burden imposed by increasing regulation, as well as by the potential risks to their business posed through the utilization of the BIC, points I discuss in greater detail throughout this writing. Since the DOL Rule's announcement, our call center leaders estimate that inquiries on how to end relationships with clients have increased four-fold, a sentiment I hear expressed by my industry peers.

Finally, we have worked over the past few years to lower the costs of more expensive commissionable solutions by lobbying product manufacturers[10] to lower their costs, as well as decreasing ours. However, this change was not initially prompted by the DOL's rule-making, rather it was the result of a well-functioning, competitive marketplace, largely characterized by firms and financial advisors who do this work because they want to help people (first) and earn a reasonable living (second).

As you can see through these examples, there is merit to the argument that the cost of DOL Rule compliance is being borne in part, or in whole, by the consumer. These examples also highlight that client access to investment products, solutions, platforms, and methods of compensation are also being restricted and that this is particularly pronounced for clients with smaller accounts.

Finally, as a firm that has worked hard to be among the best in terms of preserving client choice, we believe strongly that as one expands their view of the market to include all financial services firms, particularly those like ours, the number, type, and impact of decisions such as those described above will grow substantially, as will the impact on smaller clients, typically not served by the RIA/fee-only marketplace.

Discuss the impact of the DOL's fiduciary rule once it becomes effective on Jan. 1, 2018, as it relates to the ability of broker-dealers to continue to provide retirement investment advice to low and middle-income investors.

While the DOL Rule has already gone into effect on June 9, 2017, the rule's full implementation has still yet to occur. On January 1, 2018, when the DOL Rule is fully applicable, the withdrawal from certain markets, products, and methods of compensation described above will be even greater than it is today.

In our view, the most problematic aspect of the full DOL Rule is the myriad documentary requirements it imposes. In fact, streamlining the documentary requirements is at the forefront of

[10] *See* https://financialadvisoriq.com/c/1457773/165863.

our recommendations, as detailed throughout this testimony, and one of the areas where we are in full support of the Draft Bill. These documentary requirements, in particular the utilization of the contract per the BICE, are at the forefront of an accelerated withdrawal by financial advisors across America from serving low- and middle-income investors, and they are at the forefront of the changes our firm has already seen. These documentary requirements lie at the heart of the debate about "can" vs "will." Yes, financial advisors can use the Prohibited Transaction Exemptions (PTEs) to continue to offer commissionable solutions to smaller account holders. But will they accept the financial and reputational risks of doing so? We believe, and have seen through our experience, that the answer is no.

Those who disagree would say that if financial advisors are doing nothing wrong, they have nothing to be afraid of, but that argument is overly simplistic and disconnected from reality. Before the DOL Rule became effective, clients did not need to suffer actual harm, receive poor or conflicted advice, or have a fraud committed against them to pursue legal recourse. And in fact, cases where no wrongdoing or negligence on the part of financial advisors are brought all the time and are often settled to avoid the exorbitant costs of defense. With class action lawsuits a possibility after January 1, a financial advisor no longer needs to have personally committed a fiduciary violation, they merely need to be part of a class where a fiduciary violation *may* have occurred or part of a class where attorneys, armed with the benefit of hindsight, opportunistically attack a marketplace. This will cause the legal and compliance costs of firms like ours and our associated financial advisors to increase, as well as our costs of insurance. In fact, while our Errors & Omissions (E&O) insurance carrier has not yet raised rates as they are waiting for claims to occur, we have felt compelled to raise our policy limits in anticipation of the DOL Rule, which increased our premiums by 7 percent, and was passed along to our affiliated firms despite no change in our pattern of claims, and despite making every effort to be compliant with the rule.

Next, we have also heard our associated financial advisors discuss retirement from the financial services industry and the sale of their practices should the rule's impact be too great. These are, more often than not, sole practitioner CPAs who offer both tax preparation and wealth management services to small business owners and individuals in small rural communities. Given the geographic dispersion of these firms, it may be hard for them to merge with other larger practices and maintain service to their clients. We expect to see an acceleration in these retirements or sales after the rule's final implementation date on January 1, should the rule be enacted as written. The result will be fewer choices of affordable financial advice in smaller communities across the country.

I can use our experience at 1st Global to put the impact of the DOL Rule in real terms. To date we have spent 35 percent of our profits on DOL Rule compliance, through both direct costs and increased payroll costs. In addition, we expect to incur future costs that will continue to erode these profits by over half the amount spent to date. So far, these costs have been borne by us and have not been passed along to clients or our affiliated financial advisors. However, this is likely to change as we are contemplating increased affiliation fees in the fourth quarter of this

year to offset any ongoing costs of increased compliance. Additionally, should revenues decline as a result of the DOL Rule requirements, we would expect to increase these costs to offset some or all of these declines. An example of this is the restructuring of our pricing related to fee-based advisory accounts described earlier. The DOL Rule, as written, will no longer allow reasonable transaction-based costs in discretionary accounts, therefore we will apply a level, reasonable asset-based fee to investors in order to offset the elimination of these costs.

In addition to these metrics about our own costs of implementation, FSI engaged Oxford Economics in 2017 to conduct another study, "How the Fiduciary Rule Increases Costs and Decreases Choice" (2017 Oxford Economics Study) to update their economic analysis on the impact of the final Fiduciary Rule.[11] The findings of the 2017 Oxford Economics Study are based on the actual experience of FSI member firms implementing measures to comply with the DOL Rule, not assumptions or projections, which makes these figures far more reliable than the DOL's Regulatory Impact Analysis figures. This new report found that even Oxford's own 2015 predictions of the cost of the DOL Rule were significantly underestimated, as FSI members had already spent nearly half of the $400 million implementation cost the study predicted.[12] More specifically, the 2017 Oxford Economics Study found that FSI members have already spent $190 million preparing for DOL Rule implementation and will continue to spend an additional $205 million in preparation costs if the DOL Rule was to go into effect.[13] This means that start-up costs of the regulation are roughly 20 times higher than even the updated DOL Regulatory Impact Analysis estimated.[14] Whether because DOL's 2016 revisions to their 2015 proposed rules were not as effective at cost reduction as it thought, or because Oxford's original cost estimates were too low, the new estimates of total start-up costs are roughly 1.8 to 3.0 times higher than the DOL's most recent estimates.[15] If the FSI members' experiences were extrapolated to the universe of all broker-dealers, the total implementation costs to the industry will likely approach $1.8 billion.[16] Once implemented, these firms expect to pay an additional $230 million per year in recurring costs complying with the DOL requirements.[17] The DOL's revised Regulatory Impact Analysis did not provide a new detailed estimate of recurring costs, relying on the 2015 Regulatory Impact Analysis, while Oxford estimates the actual recurring costs to be 16.4 to 41.5 times higher than what the DOL has estimated.[18] Based on these results for startup and recurring

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[11] Oxford Economics 2017 Report, "How the Fiduciary Rule Increases Costs and Decreases Choice" (April 2017), *available at* http://www.financialservices.org/uploadedFiles/FSI/Advocacy_Action_Center/The_Fiduciary_Rule_Increases_Costs_And_Decreases_Choice.pdf.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*

costs, Oxford calculated the total 10-year costs to the industry of the DOL Rule to be approximately $14.2 billion.[19]

Comparison of Cost Estimates

	Per-firm costs			Total BD industry costs
	Small BD	Medium BD	Large BD	
Industry size (DOL)	2,320	147	42	2,509
Start-up costs				
DOL original estimates (Apr 2015)	$53,000	$145,000	$1,091,000	$190,097,000
DOL "high" estimates (Apr 2015)	$242,000	$663,000	$5,000,000	$868,901,000
OE/FSI 2015 report (Aug 2015)	$1,118,000	$3,350,000	$16,266,000	$3,769,382,000
DOL adjusted estimates (Apr 2016)	$556,301	$1,777,688	$7,366,036	$1,861,311,968
Current estimates (Apr 2017)	$911,000	$3,787,000	$13,105,000	$3,220,619,000
Ratio of current estimate to 2015 DOL estimate	17.2	26.1	12.0	16.9
Ratio of current estimate to 2016 DOL estimate	1.6	2.1	1.8	1.7
Recurring costs				
DOL original estimates (Apr 2015)	$21,000	$58,000	$436,000	$75,558,000
DOL "high" estimates (Apr 2015)	$97,000	$265,000	$2,000,000	$347,995,000
DOL adjusted estimates (Apr 2016)				$413,000,000
Current estimates (Apr 2017)	$344,000	$2,407,000	$7,375,000	$1,461,659,000
Ratio of current estimate to 2015 DOL estimate	16.4	41.5	16.9	19.3
Ratio of current estimate to 2016 DOL estimate				3.5

Source: Oxford Economics and DOL Regulatory Impact Analyses

Additionally, FSI's research indicates that there will also be other consequences of rising compliance and other costs. FSI members widely report that one consequence of the DOL Rule is that the economics of managing small accounts will cause these investors to lose access to retirement planning services and investment education, a concern I expressed as it relates to our firm above. The reality is that for many small accounts, the fixed cost of servicing the account will exceed revenue that will be earned. As a result, most FSI member firms indicate that smaller investors will be offered robo-investing type account services or be asked to move their accounts. These small (often entry level, novice investors) would lose access to the personalized retirement planning services to which they have become accustomed. This area of the market is already underserved when it comes to receiving professional financial advice. Only 32 percent of adults in the U.S. receive professional financial advice[20] and only 8 percent of financial advisors focus on targeting and serving American households with less than $100,000 in investable assets.[21] Roughly 71 percent of American households (89.6 million) have less than $100,000 in investable assets.[22] Financial advisors play a critical role in the retirement investing process by counteracting one of the challenges to investors achieving this goal – their own behavior. A 20-year analysis

[19] *Id.*
[20] Northwestern Mutual 2016 Planning & Progress Study *available at* https://www.northwesternmutual.com/about-us/studies/planning-and-progress-study-2016.
[21] Id.
[22] Id.

from DALBAR showed that voluntary investor behavior – actions such as panic selling, excessively exuberant buying, and attempts at market timing – was the single-largest contributor to long-term underperformance.[23]

While the definition of a small investor varies among our member firms, they generally estimate that the breakeven point for servicing a client's investment account ranges from $35,000 to $75,000 in assets.[24] Since the median IRA balance ranged from $23,785 to $33,185 between 2010 and 2014, it is clear that without significant changes the DOL Rule will have a devastating impact on investor access to retirement planning services.[25]

Figure 3
Average and Median IRA Balances, by IRA Type, Age, and Gender, 2010–2014

	Average					Median				
	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014
All	$91,864	$87,668	$105,001	$119,804	$127,583	$25,296	$23,785	$27,987	$32,179	$33,185
Type										
Traditional-Conts.^	88,403	78,051	97,286	112,943	120,163	29,756	24,721	32,161	37,611	39,389
Roth	24,798	25,741	31,288	37,010	39,544	11,471	11,344	12,796	15,190	15,847
Traditional-Rlvrs^	123,426	110,918	134,354	150,261	157,277	38,138	31,944	39,172	43,535	43,598
SEP/SIMPLE	55,733	56,479	67,457	79,424	84,599	15,471	15,711	17,794	20,257	20,604
All Traditional	103,346	98,797	118,645	134,791	142,780	32,647	28,457	35,803	40,996	42,157
Unknown	96,441	83,062	60,212	66,950	70,508	18,815	21,982	6,443	6,318	6,241
Age										
Under 25	21,986	11,434	11,165	13,103	13,264	5,782	3,238	3,360	3,708	3,433
25–29	10,290	12,278	11,009	12,537	12,552	4,769	4,488	4,721	5,000	4,826
30–34	16,236	18,106	17,704	20,456	21,120	7,229	6,612	7,036	7,661	7,531
35–39	25,683	27,664	29,202	33,784	34,903	10,819	10,072	11,003	12,325	12,138
40–44	36,968	38,354	42,826	49,948	52,582	14,745	13,751	15,770	17,745	17,864
45–49	50,998	51,006	59,471	68,683	72,177	19,329	18,312	21,463	24,264	24,564
50–54	74,046	66,771	80,525	91,976	96,726	24,505	23,216	28,056	31,692	32,639
55–59	92,196	86,572	108,074	122,957	130,459	31,762	29,080	36,363	41,149	42,950
60–64	129,976	116,415	147,739	165,139	175,418	42,998	38,838	49,899	55,807	59,138
65–69	170,672	145,575	191,208	212,812	224,144	58,965	50,122	66,852	75,277	79,928
70 or older	162,857	144,252	192,961	219,790	232,389	56,198	49,994	65,419	75,627	80,500
Unknown	108,765	280,290	160,233	126,759	177,699	35,255	116,475	43,666	45,801	44,692
Gender										
Female	71,112	66,529	81,700	96,339	94,774	23,246	21,642	27,826	30,660	29,651
Male	120,719	114,745	139,467	160,589	153,649	32,752	30,704	40,103	43,449	41,057
Unknown	85,037	76,604	85,230	91,853	128,631	22,820	19,916	26,589	23,576	30,923

Source: EBRI IRA Database.
^ Traditional-Conts.=Traditional-Originating from Contributions, Traditional-Rlvr=Traditional-Originating from Rollovers. Both of these accounts could have received contributions or rollovers after their origination, so these are NOT proxies for employment-based dollars versus IRA only dollars. The Traditional-Originating from Rollovers do provide an estimate of the dollars that have been moved into a new IRA.

Source EBRI.org "Individual Retirement Account Balances, Contributions, Withdrawals, and Asset Allocation Longitudinal Results 2010-2014: The EBRI IRA Database" (January 17, 2017).

What additional interim actions should the DOL adopt as it continues to review the rule's implementation as part of its Request for Information?

The most meaningful interim action the DOL should take is to immediately delay the DOL Rule's final applicability date until April 10, 2019. This will allow one of three major actions to be undertaken. First, it would allow the DOL an appropriate amount of time to fully review and

[23] 20th Annual Quantitative Analysis of Investor Behavior, DALBAR (April 2016) *available at* http://kyestates.com/wp-content/uploads/2015/02/DALBAR-QAIB-2014.pdf.
[24] Id.
[25] "Individual Retirement Account Balances, Contributions, Withdrawals, and Asset Allocation Longitudinal Results 2010-2014: The EBRI IRA Database" (January 17, 2017) *available at* https://www.ebri.org/pdf/briefspdf/EBRI_IB_429_IRA-Long.17Jan17.pdf.

consider the industry's input and make meaningful and necessary modifications. Second, it would allow Congress to fully analyze and adopt meaningful, comprehensive measures such as The Draft Bill. Third, should it be necessary, it would allow the industry additional time to implement sales and operating practices that incorporate industrywide changes being contemplated in response to the DOL Rule.

Furthermore, while a clear and substantial delay is an appropriate interim action, it also does not address our overarching concerns with the DOL Rule. To that end, we make three recommendations. First, and most importantly, is the implementation of a uniform fiduciary standard of care by the SEC, as recommended by the Draft Bill. Second, if this outcome should fail to be achieved, it is our recommendation that the DOL discontinue all further implementation of the rule, leaving in place the existing implementation requirements that became effective June 9. Third, failing both these outcomes we offer the following recommendations, taken from our response to the DOL's Request for Information:

1. Streamline BICE documentation and disclosure.
2. Create a single best interest standard applicable to all investors.
3. Revise and broaden the reasonable compensation rules.
4. Revise the rules for IRA rollovers.
5. Expand the rule's grandfathering provisions.

Please provide an overview of how the SEC is better equipped to update the standard of care for broker-dealers.

FSI has long supported a uniform fiduciary standard of care applicable to all professionals providing professional investment advice to retail clients.[26] This uniform standard of care would require financial advisors to act in the best interest of their clients, consistent with the intent of the Draft Bill.

While broker-dealers are already subject to a robust regulatory and enforcement regime designed to protect investors, FSI recognizes that multiple and differing standards of care between retirement versus non-retirement investments and transaction-based versus advisory-fee based advice leads to several negative unintended consequences for the client. These include but are not limited to overly complex disclosures, increased costs, limitations of investment choices, and reduced access to professional financial planning services.

As such, FSI supports the creation of a uniform fiduciary standard of care that would be applicable to all financial advisors regarding all investment products, not just tax-deferred retirement savings. FSI is uniquely situated to provide input on such a standard because its

[26] *See, e.g.*, Letter from David T. Bellaire, Executive Vice President & General Counsel, Financial Services Institute, to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission (Jul. 5, 2013) (commenting on Duties of Brokers, Dealers, and Investment Advisors, Release No. 34-69013; IA-3558; File No. 4-606), *available at* https://www.sec.gov/comments/4-606/4606-3138.pdf.

members, including 1st Global, are either dually-registered firms, or own separately registered BDs and RIAs (as we do), that provide both brokerage (commission-based) and advisory (fee-based) services to all types of American investors.

The SEC has clear statutory authority to regulate all financial advisors and securities products and has done so since it was established by Congress in 1934 for the sole purpose of regulating the commerce in investment products. The SEC Office of Compliance Inspections and Examinations (OCIE) has designed existing examination and enforcement protocols and trained staff to perform these functions. The SEC divisions such as enforcement, corporate finance, investment management, trading and markets as well economic and risk analysis all work to regulate and enforce U.S securities regulations for the purpose of investor protection.

The DOL lacks the expertise to effectively develop, implement, and regulate the standard of care afforded to the investing public. The DOL expertise lies in the development and implementation of regulations pertaining to wage earners, employment discrimination, employer-sponsored retirement accounts, workers compensation, and other legal and regulatory aspects pertaining to employment. Therefore, it is FSI's firm belief, and I fervently agree, that the SEC is the most appropriate governmental agency to regulate the standard of care afforded to the investing public.

This Draft Bill achieves this necessary uniform standard of care by establishing the standard of conduct for broker-dealers and their registered persons when providing recommendations to a retail customer. The recommendation must be in the customer's best interest and reflect reasonable diligence, care, skill, and prudence. The Draft Bill also empowers the SEC to issue additional regulations with regard to the standard of care. The SEC has unique expertise in regulation of broker-dealers and investment advisers as evidenced by numerous studies the SEC has conducted as required by Congress since its inception and, unlike the DOL, has the ability and authority to examine for compliance with the standard and bring corrective actions when necessary. By establishing this standard for broker-dealers, investors will no longer have to wonder what the difference is between various financial professionals and what duty of care their financial advisors owes to them.

What steps could the SEC take as part of its June 1, 2017 request for public comment on standards of conduct for investment advisers and broker-dealers?

FSI is still in the process of developing comments to the SEC in response to their request. Once the comments are complete, FSI will provide a copy to the Committee.

Comment on the discussion draft to create a best-interest standard for broker-dealers

In addition to the commentary already provided in support of the Draft Bill, I offer the following additional comments.

Meaningful Disclosures

The DOL rule creates a significant volume of disclosure that are cumbersome and expensive to create, will confuse investors with their sheer volume and complexity, and because of the private right of action created by the DOL Rule, could create immeasurable legal liability. Today, in our entry-level investment advisory programs for a fiduciary account with a minimum asset size of $5,000, the paperwork bundle that the client is required to sign is 191 pages in length. Of these 191 pages, 149 are disclosure, including the delivery of Form ADV and its required inclusions. This means that 78 percent of the paperwork a client signs in our “entry level” investment advisory program is disclosure. If you add the prospectus delivery requirement to the count, a client receives 503 pages of paperwork, totaling 461 pages of disclosure, or 92 percent of the paperwork. Additionally, after the January 1 applicability date, for a small commission-based account, which can be opened with as little as $50 initial investment utilizing the Best Interest Contract Exemption, we expect the number of pages of paperwork to be 98 pages, with 70 of those pages being disclosure. When prospectus delivery is added, the number swells to 117 of the 145 total pages, or 81 percent of the total paperwork burden imposed on clients.

The DOL itself acknowledged in their Regulatory Impact Analysis that disclosures are ineffective by stating, “Disclosure alone has proven ineffective to mitigate conflicts in advice. Extensive research has demonstrated that most investors have little understanding of their advisers’ conflicts of interest, and little awareness of what they are paying via indirect channels for the conflicted advice. Even if they understand the scope of the advisers’ conflicts, many consumers are not financial experts and therefore, cannot distinguish good advice or investments from bad. The same gap in expertise that makes investment advice necessary and important frequently also prevents investors from recognizing bad advice or understanding advisers’ disclosures. Indeed, some research suggests that even if disclosure about conflicts could be made simple and clear, it could be ineffective – or even harmful.”[27]

Furthermore, the DOL Rule’s website and transaction level disclosure obligations are particularly burdensome and do not provide investors the type of information that they actually want, such as the fees they are paying and what they are receiving for those fees. Investors want and need relevant disclosures in a simplified way they can understand. The complicated and comprehensive nature of the DOL Rule disclosures makes it highly unlikely that they will be effective in achieving the DOL’s goal of transparency and usability for investors. Investors do not need or want these voluminous and duplicative disclosures, and will not read, refer to, or rely on them. Especially when they drive up their investment costs and limit their access to solutions.The cost of complying with the heavy disclosure requirements vastly outweighs any marginal usefulness of them for the investor.

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[27] See page 9 of the Regulatory Impact Analysis *available at* https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2/conflict-of-interest-ria.pdf.

Additionally, as FSI firms, including 1st Global, have worked in the months since the DOL Rule was released to try to scope and begin building technological systems to comply with the transaction-level disclosures, it has become apparent that industry-wide changes must be considered, reviewed, structured, and implemented. This would necessitate considerable time and expense that are unrealistic with a January 1, 2018 implementation date. Further, these complex requirements make it possible, or even likely, that firms operating in good faith will make unintentional errors in their disclosures, which could further confuse clients and potentially have significant financial consequences for firms. For business leaders who partner with the owners and leaders of other businesses, the act of investing large sums of money and employee time into a likely source of increased liability and risk does not make business sense. Add in the likelihood for client frustration and you've got an excellent example of regulatory overreach.

In contrast, this Draft Bill includes a disclosure requirement at the outset of the account relationship, when the information is the most relevant, and provides a workable format: a clear and concise disclosure with a description of the type and scope of services to be provided, the standard of conduct applicable to the relationship, the types of compensation that may be charged, and any material conflicts of interest. It also allows the SEC to require disclosure of fees received by the broker-dealer prior to the transaction. The Draft Bill allows the SEC to establish the timing and content of the disclosures, which is appropriate given that the SEC has expertise and knowledge about how financial advisors work with investors.

Furthermore, the Draft Bill does not proscribe the medium for disclosure as the DOL Rule does. The provisions of the Draft Bill would allow firms the flexibility to deliver the disclosure in ways the investor wants to receive it, such as in writing, electronically, or both.

Additionally, the North American Securities Administrators Association (NASAA) has recently established a voluntary model fee disclosure template which also offers a concise and cogent summary of account expenses. This template serves as a model for disclosing relevant information to investors via the Internet. In fact, 1st Global was one of the first firms to voluntarily adopt the template on our website as we felt the information it contained was useful to investors and the format of the template is easy to read and understand.[28] Finally, the Form ADV disclosure already used by investment advisers provides useful information for client disclosure in this context.

Again, the SEC has jurisdiction over both investment advisors and broker-dealers and will have actual ability and expertise to examine for compliance with disclosure requirements and take corrective action where necessary. The common-sense disclosure requirements of the Draft Bill along with other already-available options will provide investors with the information they need to make intelligent decisions without confusion or information overload.

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[28] NASAA model template information *available at*: http://www.nasaa.org/industry-resources/broker-dealers/model-fee-disclosure-resource-center/. 1st Global fee template *available at*: http://www.1stglobal.com/downloads/acctfees2.pdf.

Material Conflicts of Interest

The DOL Rule requires firms and financial advisors to avoid conflicts of interest or avail themselves to one of the PTEs and in any case, provide advice "without regard to the financial interest of the adviser."

As FSI member firms, including 1st Global, have worked in the months since the DOL Rule was promulgated to try to comply with the vague standard of "reasonable compensation" and "eliminating" conflicts of interest, it has become apparent that industry-wide changes must be considered, reviewed, structured and implemented. Although the industry has worked diligently to consider how to implement these changes, more time is required for all parties in the product manufacturing and distribution chain to implement all the necessary adjustments.

Some FSI member firms may choose to address the compensation and conflicts of interest challenges by becoming level fee fiduciaries. As stated earlier, "level fee" is a fee or compensation provided to a financial advisor based on a fixed percentage of the value of the assets or a set fee that does not vary with the particular investment recommended. A level fee also does not include a commission or other transaction-based costs. The DOL has indicated that such an approach may be a powerful means of reducing conflicts of interest with respect to mutual fund recommendations and correspondingly reduce the need for heightened surveillance around conflicts of interest. Broadening the availability of this option may be beneficial to FSI member firms that would like to offer institutional share classes (also known as "clean shares") and reduce their regulatory burden given this payment structure is likely to meet the current definition of "level fee." However, the success of this approach depends upon the availability of appropriate investment products. There has been considerable public comment from DOL about the development and availability of "clean shares" as a primary means of creating a levelized compensation structure for sales of mutual funds, but it does not appear these shares can be made fully operational for at least 18 months, if not more.

As mutual fund, insurance, and other companies develop new share classes or other pricing options, clearing, as well as introducing firms such as 1st Global must wait to develop the necessary trading, surveillance, commission, and other systems to support their use. Once these products and resulting systems are finalized and implemented, firms will need to not only train their staff on the particulars of the products and how to supervise them but will also need to train financial advisors as well. The result is a sequential process of systems development that simply cannot be completed by the January 1, 2018 deadline.

This Draft Bill takes a more practical and reasonable approach, requiring firms and their registered persons to "avoid, disclose, or otherwise reasonably manage" material conflicts of interest that may influence a financial advisor to make recommendations in their own interest instead of the best interests of their clients. The Draft Bill specifically states that transaction-based compensation, proprietary products, and principal transactions are not per se violations of the best interest standard nor does the standard does require advisors to recommend the least

expensive product. The least expensive product is not automatically the best product for every customer. Advisors take into account a wide range of factors when making a recommendation and the least expensive product may not have important features a more costly product can provide.

Instead, the Draft Bill recognizes that it is essential to continue to allow investors to have several options for ways in which they can work with a financial professional and the means by which they choose to protect themselves and their families and plan for their future. In fact, it was Congress' expressed intent in section 913 of the Dodd-Frank Act that any uniform standard developed by the SEC should be reflective of various business models.[29] By providing for commissions and acknowledging that the lowest cost option is not always the best option, this Draft Bill avoids preferential treatment of one business model over another and recognizes that commissions and sales charges are acceptable ways to compensate investment professionals and even preferable to many investors.

Most importantly, the Draft Bill clearly recognizes the value of advice. The language of the Draft Bill acknowledges the reality that investors need and flexibility in the means by which they have access to financial advice.

Conclusion

While the DOL no doubt had good intentions when it developed their fiduciary standard and requirements, the unintended consequences that many in the financial services industry have continued to raise are without a doubt already coming to fruition. I wish to emphasize that my concern and the concerns of FSI are not that the DOL Rule expands the ways in which we are held to a fiduciary standard of care. Both FSI and I agree that a carefully-crafted, uniform fiduciary standard of care would be beneficial for investors and reduce regulatory confusion. We believe, however, that this standard of care should be created and overseen by the SEC, which is what this Draft Bill accomplishes. We also believe that investors need and deserve clear and concise disclosures that provide them with useful information in an easy-to-read format of their choice. Again, the DOL Rule fails on this point while the Draft Bill accomplishes helpful disclosures for investors.

Furthermore, we strongly believe that all investors must retain access to valuable advice in order to provide them the means and resources to plan for a dignified retirement. The DOL Rule's focus on eliminating conflict and reducing fees is miscalculated, misdirected, and misapplied. The result is that it threatens investor access to advice by creating favored means of working with an advisor.

This Draft Bill makes the important distinction between low cost advice and valuable advice. The value of working with a financial advisor goes well beyond fees. A 2016 study conducted by Vanguard determined that the value of a financial advisor to a client is worth up to

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[29] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 913, 124 Stat. 1376 (2010).

2.95 percent, net of fees, if the advisor focuses on relationship-oriented services — such as providing cogent wealth management via financial planning, discipline and guidance — rather than by trying to outperform the market.[30] Investors who have access to and receive financial advice enjoy both tangible and intangible benefits that cannot be expressed in dollar terms.

This Draft Bill will allow the financial advisors 1st Global serves, who are already heavily regulated and, because of their high ethical standards, already working in their clients' interests, regardless of the regulatory framework they operate under, to focus on the investor rather than unnecessary and cumbersome regulatory requirements.

Finally, my testimony would not be incomplete without dedicating at least one paragraph to defend the honor of the CPA wealth management firms I have the privilege to work with daily. This DOL Rule has been hard on them, not just for the compliance burden which has been discussed here at length, but because their good work and honor has been needlessly attacked. I work with nearly 1,000 professionals, as well as 200 employees in our home office, who show up every day to serve their clients and their communities, and make their world just a little bit better each day. Every CPA financial advisor I have ever spoken with is called to service for two reasons: they enjoy solving complex problems and they enjoy doing good for others, and offering wealth management services to their clients lies at the intersection of this calling. Without eschewing the need for reasonable regulation, what I see are people who do what is right for their clients, not because of a regulatory requirement or a published standard of care, but because it is merely the right thing to do. It is a dishonor to the vast majority of our marketplace who are called first to serve their communities, and happen merely to earn a living for doing so, to accuse them of putting selfish interests first. It is simply not what I see. What I see is the business owner who has worked her entire life to grow a business and is now graced with the sale of it, and has no idea what do with the proceeds so that she can honor the promises she has made. What I see is the family member suffering from cancer who can focus on his recovery because his financial affairs are completely and fully in order. What I see is the widow who relies on her financial advisor to transition to life without her spouse. What I see is the person entering retirement who can enjoy the fruits of their hard work, because they have an advisor who helped them plan and save, and who now guides them on living a dignified life, sustained by the power of choice. Where the authors of the DOL Rule see the financial services industry as populated with shadowy characters out for themselves, I see nothing but genuine concern and valuable expertise when I work with our financial advisors. My wish for you is to see what I see and help independent financial advisors like ours across America serve more clients, serve them better, and serve them more completely by reducing their regulatory burden without reducing the standard of care.

I thank the Chairman, Ranking Member, and the rest of the Subcommittee for allowing me to share my thoughts on the major challenges and unintended consequences of the DOL rule and the ways in which this Draft Bill provides the same investor protections while applying practical,

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[30] Putting value on your value: Quantifying Vanguard Advisor's Alpha®, September 2016 *available at* https://www.vanguard.com/pdf/ISGQVAA.pdf.

common-sense requirements that will ensure that Americans can continue to receive professional financial advice while they work toward a dignified retirement.