



SAVE OUR



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# RETIREMENT

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## Myth vs. Fact: DOL's Proposed Retirement Security Rule

A recently proposed Department of Labor [Retirement Security Rule](#) would require financial advisers to put their clients' interests before their own when providing advice about retirement investments. Most people are shocked that isn't already required of financial professionals! This is a common-sense and much needed update to a 50-year-old law that will better protect retirement assets and ensure Americans have the financial security to retire comfortably. But some have questioned the need for the Rule, and we would like to take the opportunity to address these concerns.

*There is no evidence that there is harm being caused under the current regulations - why is this proposal necessary?*

Higher fees and inappropriate products can dramatically reduce retirement savings, especially over time. [Analysis](#) from *Morningstar estimates the proposal will save workers and retirees tens of billions of dollars*. They estimate because of this Rule, investors in workplace retirements plans will save more than \$55 billion in the first decade and annuity investors will save over \$32.5 billion. **These immediate savings make it clear retirement investors are receiving advice not in their best interest – we can do better. And we should.**

*Industry opponents says that they are already complying with a best interest standard and this proposed Rule is unnecessary. Is this true?*

**While some in the industry are already required to meet a best interest standard, others are not.** If everyone in the financial industry were already complying with a *true* best interest standard, **why would they fight so hard against codifying a true best interest standard?** The fact that some are so opposed to the Rule is a clear indication that they are *knowingly* providing conflicted advice to clients and do not want to be held to a higher standard that would put their clients' best interests first.

*Some industry opponents are claiming lower- and middle-income workers will lose access to financial advice – is there any truth to this?*

**No.** In fact, this Rule will ensure that lower- and middle-income workers receive advice that is **in their best interest, rather than in their adviser's**. There is *nothing* in the Rule that would require advisers to change their business models or cease to provide services

to *any* segment of investor. The proposed Rule simply states that the advice they provide must be in the best interest of their clients.

Financial advisers that claim they cannot operate under the best interest standard are simply telling you that a core part of their business is to not act in their clients' best interest. If advisers tell you they plan to cut access to low-income clients as a result of the Rule, they are telling you they are currently providing those clients with conflicted advice which they will no longer be able to do once the Rule goes into effect. ***Everyone deserves advice that is in their best interest, no matter their income bracket. And no one deserves to have their advisers line their pockets at their expense.***

Opponents of the Rule are using fuzzy statistics that have been [debunked](#). An often-cited paper by Deloitte was paid for by opponents of a previous version of the Rule based on data they provided, without independent auditing, validation, or verification. The Department of Labor, in an effort to better understand concerns, was denied access to the underlying data.

Under the Securities and Exchange Commission (SEC) 2020 implementation of [Regulation Best Interest](#) (Reg BI), together with the previously implemented Advisers Act fiduciary rule, broker-dealers and investment advisers have largely adopted compliance mechanisms that enable them to comply with the DOL proposal (PTE 2020-02). However, **Reg BI only applies to securities**. The proposed DOL Rule, which would apply to all pension products, was designed to align with the SEC's Reg BI rule and **there has been no evidence that Reg BI has reduced lower- and middle-income workers' access to investment recommendations**.

Currently, 1 in 3 retail financial advisers (approximately 99,000 advisers) in the United States are [Certified Financial Planner \(CFP\) Board](#) certified. As part of the CFP certification, these financial advisers make a commitment to act as a fiduciary when providing financial advice and to put their clients' best interests first. More than half of CFP professionals (52%) provide financial advice to clients with a household income of \$0 to \$75,000, and two-thirds (67%) provide financial advice to clients with a household income between \$75,001 and \$150,000. 42% of CFP professionals do not [require](#) their clients to have a minimum amount of investable assets. The CFP Board, which supports the Rule, have shown it is both possible and profitable to serve investors across the income spectrum/network spectrum while complying with strong fiduciary best interest duties.

In addition, [evaluations](#) conducted after the implementation of similar requirements passed in the UK have found market improvements, with an increase in adults receiving financial advice.

***Will this Rule result in investors having access to fewer investment products?***

**This Rule would require financial advisers to only recommend products that are in the best interest of their clients, meaning that they are the best fit for their financial goals and have reasonable fees.** Currently, some financial professionals recommend products not because it is in their clients' best interest, but because they receive excessive fees and commissions by recommending those products to their clients. If under a higher standard they will not be able to recommend those products, it is because recommending those products is not in their clients' best interest. That's not a bad thing.

***The Fifth Circuit overturned a previous rule in 2018 – how does this Rule address the court's concerns?***

In 2016, the DOL finalized a broader Fiduciary Rule with more expansive requirements. This rule was overturned by the Fifth Circuit in 2018, which found that it covered situations in which an investor might not have placed their trust and confidence in the financial professional. This new Rule is more narrowly tailored to address the concerns raised by the Fifth Circuit.

The protections under the Retirement Security Rule would only apply if a retirement investor is provided recommendations by a financial professional for a fee or compensation and can and should reasonably place their trust and confidence in the advice provider. Further, under this proposed Rule, financial professionals would not be required to execute best interest contracts with warranties guaranteeing they would meet certain protective conditions, or to provide third party compensation website disclosures. These modifications narrow the scope of the Rule and address concerns raised by the Fifth Circuit while also protecting retirement savers.

***Does the SEC's Regulation Best Interest already address these concerns?***

The SEC's Reg BI was adopted in 2019 and implemented in 2020 to enhance the quality and transparency of retail investors' relationships with broker-dealers. While the SEC's Reg BI applies to SEC-regulated products, like securities, ***it does not apply to other types of investments available to retirement savers, such as commodities, real estate, and certain insurance products.***

Changes are needed to ERISA to ensure that all potential retirement products are subject to the best interest standard, not just securities products under the SEC rule. Current loopholes allow some products to escape the requirements under ERISA and are not covered by Reg BI, allowing financial professionals to recommend products not because it is in their clients' best interest, but because they receive higher fees and commissions. Here are some examples of products that fall into those categories:

- **Real estate**
- **Banking** – certificates of deposit and collective investment trusts
- **Insurance** – Fixed indexed **annuities**, which unlike certain other annuity products are not regulated as securities, include complex features such as unproven hybrid indices, volatility controls that limit their performance, surrender charges, and

large commissions.<sup>1</sup> In fact, insurance industry materials indicate that selling fixed-indexed annuities over other annuity products will quadruple an insurance producer's commissions.<sup>2</sup>

- **Commodities** – cryptocurrencies like **Bitcoin** (cryptocurrency IRAs have become increasingly prevalent<sup>3</sup> and the DOL has issued a compliance assistance release on the inclusion of cryptocurrencies in 401(k) plans, noting that “cryptocurrencies have been subject to extreme price volatility.”<sup>4</sup>) and precious metals like **gold** (The CFTC warns investors in an advisory: “Unlike financial professionals who have a fiduciary responsibility to you, precious metals salespeople typically are not qualified or legally allowed to provide investment advice, and are not obligated to help you make the best decisions for your financial future.”<sup>5</sup>)

***Does the National Association of Insurance Commissioners' model regulation already address these concerns?***

In 2020, the NAIC adopted its [Suitability in Annuity Transactions Model Regulation](#). Since then, more than 40 states have adopted updated conduct standards for insurance agents and insurance companies recommending annuities based on this model regulation. However, *as the model regulation itself explicitly states in Section 6(d), it is not a fiduciary standard. Rather, it is a suitability standard.* “The requirements under this subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this regulation.”

For example, the NAIC model, which was designed exclusively for the sale of insurance products, requires only disclosure of the producer's compensation (with minimal disclosure and limited utility), and explicitly ***excludes*** that compensation from the conflicts of interest that require mitigation. Indeed, “cash<sup>6</sup> or non-cash compensation” – which most people would reasonably expect to be the source of material conflicts of interest – are expressly carved out from material conflicts of interest under this regulation in Section 5(l)(2), thereby necessitating further consumer protections to ensure that financial professionals are acting in their customers best interests.

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<sup>1</sup> Consumer Federation of America, “Comment Letter: Definition of Fiduciary – RIN 1210-AC02,” January 2, 2024, <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AC02/00336.pdf>.

<sup>2</sup> New Horizons Insurance Marketing, “A Beginner's Guide to Selling Fixed Indexed Annuities (FIAs),” <https://blog.newhorizonsmktg.com/a-beginners-guide-to-selling-fixed-index-annuities-fias1544>.

<sup>3</sup> Forbes, “Bitcoin IRA: How to Invest For Retirement with Cryptocurrency,” November 2, 2023, <https://www.forbes.com/advisor/investing/cryptocurrency/bitcoin-ira/>.

<sup>4</sup> EBSA Compliance Assistance Release No. 2022-01, “401(k) Plan Investments in “Cryptocurrencies”,” March 10, 2022, <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/compliance-assistance-releases/2022-01>.

<sup>5</sup> CFTC, “Precious Metal Frauds,” <https://www.cftc.gov/LearnAndProtect/metalsfrauds>.

<sup>6</sup> Per NAIC Model Rule section 5.B., “cash compensation” is defined as “any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer” (<https://content.naic.org/sites/default/files/inline-files/MDL-275.pdf>).

In spite of the adoption of the NAIC model rule, which was supposed to “to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time,” the practice of awarding trips and bonuses as incentives for the sale of fixed annuities continues. See for example:

- [2025 Equitrust Producer Incentive Trip to Turks and Caicos](#) (“Paradise Awaits” – “minimum production/business requirements - \$5 million in production credit on 5 or more cases of eligible business.)
- [Global Atlantic Financial Group Peak Producer Circle Trip to Half Moon Bay](#) (“A coastal oasis awaits” – “Minimum \$4 million production credit”)
- [American National Life & Annuity Distribution Marketing Conference 2025: Ireland](#) (“You and a guest could escape for a wonderful six day and five night stay and experience historic site seeing, shopping and entertainment in Dublin” “Minimum Qualifications: 1. \$125,000+ of Conference Credit AND 2. 12 New Policies”)<sup>7</sup>

Please also see this comparison [guide](#) from the CFP Board, which outlines the similarities and differences between the NAIC Model Regulation and the CFP Board Code and Standards.<sup>8</sup>

***Will this proposed Rule result in overly burdensome compliance requirements financial advisers, many of whom are already acting in their clients’ best interests, but worry about filling out paperwork to prove this is the case?***

These concerns, which carry over from the previous 2016 rule, are not relevant to this more narrowly tailored Rule. The 2016 rule included a contract requirement, a warranty requirement, as well as third-party compensation website disclosure requirements. The new Rule does not include the contract requirement (thus also removing the private right of action), the warranty, or disclosure requirements. The previous rule also had a much broader definition of who fell under Investment Advice Fiduciary. The new proposed Rule narrows that definition to address prior concerns. Finally, the PTEs are fashioned much like those of Reg BI – already in effect – in order to streamline compliance.

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<sup>7</sup> This marketing material even has a caveat making clear that they recognize they would have to change these incentives were the DOL rule to go into effect: “The company reserves the right to amend the annuity conference credit if any Department of Labor restrictions on compensation on qualified annuities sales to into effect.”

<sup>8</sup> CFP Board, “Comparing CFP Board’s Code of Ethics and Standards of Conduct The NAIC’s Suitability in Annuity Transactions Model Regulation #275,” 2023, <https://www.cfp.net/-/media/files/cfp-board/standards-and-ethics/compliance-resources/naic-comparison-guide.pdf?la=en&hash=6BB8B19F88D0BA582E55DAB195F9BED1>.