

United States Senate

WASHINGTON, DC 20510

March 26, 2024

The Honorable Julie Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue
Washington, DC 20210

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Dear Acting Secretary Su and Director Young,

We write in strong support of the Department of Labor's proposed Retirement Security Rule. The proposed rule ensures that every retirement saver who seeks the assistance of an investment professional will receive advice that puts their best interests first. The proposed rule will help ensure that savers get the most out of their retirement savings, without limiting access to high-quality advice for low- and middle-income savers.

This rule addresses existing loopholes that allow advisors to recommend retirement investments based on the compensation they can receive, not on what is truly in the best interest of their clients. This practice can reduce retirement savings, forcing some workers to delay retirement, reduce their standard of living, or even run out of money. The proposed rule would ensure that the high standard Congress set forth in ERISA applies consistently and fairly across investment products and advisors. It also makes modest changes to the advisor duties in place since 2020.

The Retirement Security Rule sets a consistent standard for those offering advice across the spectrum of investment products. The SEC's 2019 Regulation Best Interest significantly improved the standards applicable to broker-dealers but only applies to investments in securities, not products such as fixed index annuities, real estate, crypto, or commodities. In addition, the SEC's rule only applies to retail investors, not to investment recommendations made to retirement plans. While many states have adopted the model rule from the National Association of Insurance Commissioners governing annuity sales, that rule is insufficient to protect savers from conflicted advice; the model rule only requires disclosure of compensation and explicitly excludes compensation from the conflicts requiring mitigation.

The Department of Labor's proposed rule would apply a best-interest standard to retirement investment advice not currently covered by the SEC's rule. It would address a major issue impacting millions of savers by applying a best-interest standard to one-time advice, like retirement-fund rollovers, and extend protections to products not covered by the SEC's rule, including fixed index annuities. These reforms will

make a huge difference to retirement savers. Investments in fixed index annuities, for example, grew to a total of \$559 billion in 2021.¹ According to the White House Council of Economic Advisors, insurance professionals can receive commissions in the range of 6.5% for selling these products—leading to recommendations that are not always in the best interest of savers—and “the amount lost to conflicted investment advice could be as high as \$5 billion annually with respect to just this one category of investment.”² Similarly, savers rolled over almost \$780 billion into IRAs in 2022.³ Rollover funds often constitute the bulk or entirety of a retiree’s savings; conflicted advice can put those funds at risk and threaten savers’ retirement security.

Working families of every background expect and deserve investment advice that puts their interests first. Low- and moderate-income people are the savers least able to afford poor investment decisions based on conflicted advice. Contrary to what some say, the proposed rule will not constrict access to financial advice. Indeed, many high-quality financial planners already operate under a fiduciary standard, serving clients across the income spectrum. Moreover, evidence from the implementation of the SEC’s Regulation Best Interest demonstrates that advisors can operate successful businesses while offering advice in the best interest of their clients, including low- and moderate-income savers.

Many savers make the reasonable assumption that any professional holding themselves out as an advisor will act in the best interests of their clients. A 2019 study, for example, found that “65% of those who worked with an advisor believed that all financial advisors recommend only what is in a client’s best interest.”⁴ A December 2023 AARP survey of people age 50 and over found that nine in 10 people thought financial professional should be obligated to put their clients’ interests first when giving advice on retirement funds.⁵ Similarly, a poll sponsored by groups including AARP and the Consumer Federation of America found that 3 in 4 Americans thought that professionals calling themselves “financial advisors,” “financial planners,” and “investments advisors” were already held to a fiduciary standard.⁶ This rule would align federal rules with the common-sense assumptions most savers make when engaging the services of a financial professional.

Finally, the rule is consistent with the Department of Labor’s authority under ERISA and narrowly tailored to comply with recent legal precedent. The Proposed Rule is consistent with the 2018 Fifth Circuit Court of Appeals ruling, applying the rule only to advisors in whom savers “reasonably place their trust and confidence.”⁷ In addition, the rule does not prohibit any particular form of compensation for advisors but merely ensures that the advice they offer is not tainted by conflicts. Moreover, in compliance with the Fifth Circuit’s legal precedent, the rule includes no provisions creating a new cause of action on behalf of retirement savers.

¹ White House Council of Economic Advisors, *The Retirement Security Rule - Strengthening Protections for Americans Saving for Retirement*, (October 31, 2023). Web: <https://www.whitehouse.gov/cea/written-materials/2023/10/31/retirement-rule>.

² White House Council of Economic Advisors, (October 31, 2023).

³ White House Council of Economic Advisors, (October 31, 2023).

⁴ Michael S. Fischer, *Many Investors Are Confused About Financial Advice: Personal Capital*, Think Advisor (March 13, 2019). Web: <https://www.thinkadvisor.com/2019/03/13/many-investors-are-confused-about-financial-advice-personal-capital/>.


⁵ AARP, *Unbiased Financial Advice About Retirement Is Important to Older Adult*, (January 2, 2024). Web: <https://www.aarp.org/pri/topics/work-finances-retirement/financial-security-retirement/fiduciary-duty-retirement/>

⁶ Consumer Federation of America et al., *Survey: Vast Majority of U.S. Investors Support Clear “Fiduciary Standard” for Financial Professionals, Widespread Confusion Seen Linked to Current SEC Rules* (September 15, 2010). Web: https://consumerfed.org/press_release/survey-vast-majority-of-u-s-investors-support-clear-fiduciary-standard-for-financial-professionals-widespread-confusion-seen-linked-to-current-sec-rules/.

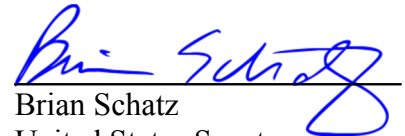
⁷ Retirement Security Rule, 88 Fed. Reg. 75890, 75902, (Oct. 31, 2023).

Retirement savings deserve strong safeguards given how critical they are to ensuring that everyone can enjoy a dignified retirement. Savers who receive conflicted advice unknowingly take risks that may imperil their retirement funds and may cost them dearly in the long run. We urge swift implementation of the proposed rule.

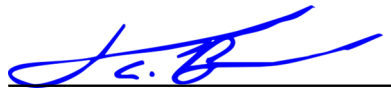
Sincerely,




John Fetterman
United States Senator




Brian Schatz
United States Senator




Cory A. Booker
United States Senator



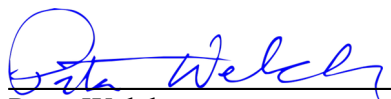
Elizabeth Warren
United States Senator



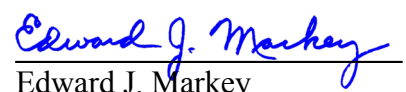
Sheldon Whitehouse
United States Senator




Bernard Sanders
United States Senator



Peter Welch
United States Senator



Edward J. Markey
United States Senator



Raphaela Butler
United States Senator