Economic
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EPI comment regarding the fiduciary rule and prohibited transactions exemptions

Testimony • By Heidi Shierholz and Monique Morrissey • August 8, 2017

Office of Exemption Determinations
Employee Benefits Security Administration
Attention: D-11933
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Request for Information Regarding the Fiduciary Rule and Prohibited Transactions Exemptions

RIN 1210-AB82

To the Department of Labor:

The Economic Policy Institute (EPI) is a nonprofit, nonpartisan think tank created in 1986 to include the needs of low- and middle-income workers in economic policy discussions. On July 21, 2017, EPI submitted a response to your Request for Information, expressing strong opposition to any further delay in the full implementation and enforcement of the fiduciary rule. In particular, EPI objected to any delay in the January 1, 2018, applicability date of the provisions in the BIC Exemption, Principal Transactions Exemptions, and amendments to PTE 84-24.

In the July 21 letter, EPI estimated the cost to retirement savers of further delays in full implementation and enforcement. Specifically, EPI estimated that the cost to retirement savers of the announced seven-month delay (from June 9, 2017 to January 1, 2018) in full implementation and enforcement to be $3.9 billion dollars over 30 years, with each additional year's delay costing an additional $7.3 billion dollars over 30 years.

We are following up in order to rebut misleading arguments made by opponents of the rule, including the U.S. Chamber of Commerce.[1] The Chamber and other industry allies claim that the fiduciary rule will hurt the very savers it is designed to help by increasing fees paid for investment advice, restricting access to retirement services, and limiting investment options.

Affected industries invariably predict dire outcomes from regulations they oppose, since there are no repercussions when their predictions prove unfounded. In this case, the industry's main argument rests on the assumption that retirement savers receive valuable advice in exchange for commissions paid to brokers and other conflicted "advisers," and that absent these commissions many retirement savers would pay recurring fees over longer periods to financial advisers for equally valuable advice. If this were true, long-term savers could be better off paying one-time commissions to brokers than recurring fees to financial advisers.

In fact, conflicted advice tends to be *bad* advice, steering savers to underperforming funds and encouraging inappropriate investment strategies. Summarizing the research, the Council of Economic Advisers noted in its 2015 report that it "consistently finds that funds characterized by conflicted payments significantly underperform funds sold directly to savers" and that "it is not merely the cost of paying those intermediaries that leads to underperformance."[2] This conclusion was reaffirmed recently by a Morningstar report, which noted that small savers would benefit from the fiduciary rule not just because they would pay lower fees or commissions (which may vary depending on how long investments are held) but because conflicted advisers steer savers to underperforming funds and asset classes associated with higher share loads.[3]

Thus, whether or not most retirement savers who currently rely on a broker's conflicted "advice" will actually hire financial advisers instead—a doubtful assertion—"advice" from brokers is not comparable to advice from disinterested experts. Similarly, even if the industry's prediction that the rule could cause investors to lose access to some investment products is borne out, it does not follow that investors will be harmed since these products are unlikely to be in savers' best interests.

There is no evidence that the rule will cause investors to lose access to products or services that actually benefit them. For example, even if fewer IRAs are opened, some of the worst abuses occur when salespeople passing themselves off as advisers convince retirees to roll over 401(k) balances into high-cost IRAs. This has happened even to federal workers enrolled in the Thrift Savings Plan, which the *Washington Post* called "the gold standard of 401(k)-type programs for its rock-bottom fees."[4] So, while minimizing conflicts of interest will negatively affect "advisers" who are in the business of steering retirees from low-cost TSP accounts into high-cost IRAs, neither the loss of this so-called advice nor the reduction in the number of IRAs created from rollovers hurts investors. Moreover, since bad products and services crowd out good ones, the anticipated fiduciary rule—despite the Trump administration's delay in implementing it—has already expanded the market for low-cost investment options.[5]

The Chamber and other industry allies back up their claims of harm to investors with self-serving industry surveys, not serious research by experts who have reputations to protect. The few academic and think tank studies cited are either irrelevant, industry-funded, or both. Thus, the first study cited in the Chamber report is based on a survey of Canadians (not Americans, as the Chamber claims) conducted by an academic center that boasts Canadian banks and other financial institutions as "corporate partners."[6] Another is attributed to "economists from the Brookings Institution," with no mention of the fact that co-author Robert Litan was asked to resign his Brookings fellowship after using the think tank's name to lend credibility to the study, which was commissioned by an investment firm.[7]

Retirement investors need and deserve to receive the protections of the full fiduciary rule. The department should conclude that the fiduciary rule should become fully applicable on January 1, 2018, as currently scheduled.

Sincerely,

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1. U.S. Chamber of Commerce, "The Data Is In: The Fiduciary Rule Will Harm Small Retirement Savers," May 25, 2017.

2. Council of Economic Advisers, "The Effects of Conflicted Investment Advice on Retirement Savings," February 2015.

3. Aron Szapiro and Paul Ellenbogen, "Early Evidence on the Department of Labor Conflict of Interest Rule: New Share Classes Should Reduce Conflicted Advice, Likely Improving Outcomes for Investors," Morningstar, April 2017.

4. Bloomberg News, "As brokers urge IRA rollovers, ex-workers ditch their low-fee federal retirement plan," *Washington Post*, August 16, 2014.

5. Greg Iacurci, "New mutual funds under DOL fiduciary rule could save investors at least 0.50% in returns," *Investment News*, April 18, 2017.

6. Claude Monmarquette and Nathalie Viennot-Briot, "The Gamma Factor and the Value of Financial Advice," Centre interuniversitaire de recherche en analyse des organisations (CIRANO), August 2016.

7. "Study Criticizing Fiduciary Rule Costs Brookings Economist His Position," NAPA.net, September 29, 2015.