United States Senate

WASHINGTON, DC 20510-0609

December 18, 2023

Julie Su
Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Acting Secretary Su:

We write today to express our concern with the Department of Labor's new rule proposal entitled "Definition of an Investment Advice Fiduciary," released on October 31, 2023. We appreciate the Department's desire to ensure Americans are protected as they pursue the financial means to enjoy a secure retirement, but this proposal will have the opposite effect by imposing significant costs that will limit investors' access to the financial advice they need to secure their future. In our view, the Department's proposal is unnecessarily duplicative of existing regulatory protections and will merely create excessive regulations on an already burdened industry.

Designating any advisor that charges a fee as a fiduciary misunderstands the purpose of choices in the advisor market. Investors can currently choose whether to pay for financial advice through fee for service planning, assets under management fees, and/or commissions. This choice benefits investors – for example, on buy-and-hold financial products, commissions are often less expensive than fees. Each type of advising serves a unique purpose and they should not be lumped together like this rule does. With the fiduciary responsibility comes added costs and liability for an advisor, leading them to change the way they invest for their clients and the services they may offer. Further, the 5th Circuit's ruling invalidating the 2016 fiduciary rule found that Congress intentionally structured ERISA to recognize the distinction between investment advice and sales. This rule does not recognize the difference between investment advisers paid fees for advice, who have long been considered fiduciaries; and brokers and insurance agents, who did not assume fiduciary status in selling products to their clients. The Department of Labor does not have the authority to adopt this proposal and is deliberately acting against the 5th Circuit's previous decision.

Building off of this, consumers will not only lose out on choices in the market, but some may be cut out from utilizing advisors entirely. As we saw from a similar rule in 2016, more than 10 million retirement account owners were limited or had to altogether stop working with their financial advisor[1], not to mention the $900 billion in savings they missed out on because of that rule. At a time when the current retirement gap is at $3.68 trillion [2], the last thing the Department needs to be doing is implementing rules that will take away retirement savings from our constituents.

What the Department also forgets is that the Securities and Exchange Commission (SEC) has already addressed this issue through its Regulation Best Interest (Reg BI). Reg BI requires all financial

---

[1] https://hispanicleadershipfund.org/wp-content/uploads/2021/11/FINAL_HLF-Quantria_FiduciaryRule_08Nov21.pdf

[2] https://www2.deloitte.com/uk/en/insights/industry/financial-services/closing-retirement-savings-gap.html

professionals to provide their clients with advice that is in their best interest. Dually registered financial professionals (i.e. those offering services through a broker-dealer and investment adviser) are held to the Investment Adviser act of 1940's fiduciary standard. Further, those selling variable annuity products to retirement investors are subject to the NAIC's model fiduciary regulation. These regulations already ensure advisors and brokers are investing properly for their clients. Adding more onerous regulations will hamper this industry and add unnecessary costs that could otherwise be used to serve clients and generate wealth.

Again, we appreciate the Department's overarching goal of protecting consumers, but there isn't anything they need to be protected from here. The industry currently has robust regulations in place. This rule would merely limit options for consumers and take money out of their pockets. We strongly urge the Department to rescind this rule so Americans can maintain their financial freedom.

Sincerely,

Roger W. Marshall

Roger Marshall, M.D.
United States Senator

John Barrasso

John Barrasso
United States Senator

Mike Braun

Mike Braun
United States Senator

Susan M. Collins

Susan Collins
United States Senator

John Cornyn

John Cornyn
United States Senator

Joni K Ernst

Joni K. Ernst
United States Senator

Chuck Grassley

Chuck Grassley
United states Senator

Bill Hagerty

Bill Hagerty
United States Senator

Cindy Hyde-Smith

Cindy Hyde-Smith
United states Senator

M. Michael Rounds

M. Michael Rounds
United States Senator

John Thune

John Thune
United States Senator