Consumer Federation of America

# DOL Retirement Security Proposal: Setting the Record Straight

## Exposing the Misinformation and Scare Tactics Being Used to Kill the Rule

The Department of Labor's (DOL's) Retirement Security Rule proposal would enhance protections for retirement savers who receive investment advice from financial professionals. The proposal would ensure that all financial professionals, regardless of the products that they recommend, are required to act in savers' best interest. The proposal would close loopholes in the current law that allow financial professionals to do what is best for themselves instead of what is best for their clients. Retirement savers shouldn't have to work longer or make do with less money in their golden years because a financial professional took advantage of them.

Those opposed to the proposal would lose billions of dollars—that they currently siphon from retirement savers—if they had to act in their clients' best interest. In an attempt to discredit the rule, industry opponents have spread misinformation—issued in the form of biased "studies" and "surveys" purporting to show negative impacts on small savers and substantial costs for industry. These self-serving "studies" and "surveys" are thinly veiled lobbying tools designed to preserve the very profitable status quo. They are not objective analyses and should not be relied upon as a basis for having concerns about or opposing the Rule.

### The 2017 SIFMA-Deloitte "Study"

Industry opponents are recirculating a so-called "Deloitte Study" to raise concerns about access to retirement investment advice for smaller savers if the proposed rule is adopted.[1] This is a deeply cynical ploy for three reasons: (1) it is in no way a "Deloitte" study; (2) the 2017 "study" in question examined the 2016 rule, not the current rule proposal; and (3) the conclusions are unreliable.

The Securities Industry and Financial Markets Association (SIFMA), a broker-dealer trade association, conducted an opinion poll of its members that Deloitte published in 2017. The "study" admits that it's not Deloitte's work product. For example, the report states, "The findings presented are based on the analysis of information and data provided to Deloitte. Deloitte has analyzed, aggregated and summarized the information provided, but was not asked to and did not independently verify, validate or audit the information provided during the course of the engagement." In other words, SIFMA hired Deloitte merely to play scribe to SIFMA members as they aired their complaints. It is nothing more than a SIFMA lobbying piece dressed up as a credible and independent report.

[1] Securities Industry and Financial Markets Association and Deloitte, "The DOL Fiduciary Rule: A study on how financial institutions have responded and the resulting impacts on retirement investors," August 9, 2017, https://bit.ly/2KsoCMV.

Second, the report analyzed the effects of the 2016 DOL fiduciary rule, which had a broader scope, more onerous conditions, and significantly greater potential for liability for financial professionals and firms associated with it than the proposed Retirement Security Rule.

And, third, the "study's" contents and "findings" are dubious. Specifically, no one knows how SIFMA conducted the survey because SIFMA has decided not to disclose this information. The "study" fails to clearly describe either the methodology that was used or the assumptions that were made to reach the report's conclusions. SIFMA did not make the underlying data available so that the conclusions they reached could be scrutinized for accuracy. What we do know is that only 21 of SIFMA's hundreds of member firms participated, and that SIFMA did not identify these firms, the individuals at the firms who offered their opinions, or the questions that SIFMA asked. It's a very dark, black box.

In short, virtually every aspect of how this "study" was conducted casts doubt about the accuracy and reliability of SIFMA's conclusions.

## **The FSI-Oxford Economics "Survey"**

The Financial Services Institute (FSI), a trade association for independent broker-dealers, asked Oxford Economics to conduct an opinion poll of FSI members to assess the proposed rule.[2] FSI shrouded its poll in secrecy, just like it did with a similar poll back in 2015. The DOL debunked that prior poll, stating, "These data are problematic due to small sample sizes, selection issues, lack of peer review, lack of independent verification, and the reports' omission of details about sample composition, survey design, and data collection. All of these factors cast doubt on the accuracy and reliability of these data." The same concerns apply to the most recent opinion poll.

Only 15 of FSI's 90 member firms participated in this most recent opinion poll. We don't know who they are. We also don't know whether these firms were selected or primed to present the most negative view of the proposed rule possible or embellish their cost estimates, which they have an incentive to do for advocacy purposes.

FSI also threw out answers that it didn't like in this most recent opinion poll. The survey admits, "Some firms answered every question but entered 0s that were nonsensical. These 0s were treated as missing." Thus, it appears that, if firms didn't think certain line items would add costs, FSI disregarded those answers. Secret opinion polls that throw out unfavorable responses lack credibility and legitimacy. The fact that FSI published a report admitting that some of its own members' answers were "nonsensical" reinforces the lack of credibility and legitimacy of the survey's "findings."

## **The Hispanic Leadership Fund "Study"**

In 2021, the Hispanic Leadership Fund and Quantria, with help from industry lobbyists, prepared a paper on the effects of reinstatement of the 2016 rule.[3] The paper is irrelevant because it

---

[2] Financial Services Institute and Oxford Economics, "Economic Analysis of the DOL's Proposed Retirement Security Rule ('Fiduciary Rule'), A Report for the Financial Services Institute, January 2024, https://bit.ly/3uyqP6U.
[3] Hispanic Leadership Fund, "Analysis of the Effects of the 2016 Department of Labor Fiduciary Regulation on Retirement Savings and Estimate on the Effects of Reinstatement," November 2021, https://bit.ly/4btRhiF.

applies to the 2016 rule and not this proposal. Even Rule opponents acknowledged that this proposal is markedly different than the 2016 rule when asking for more time to comment on this proposal. For example, the current proposal defines fiduciary investment advice much more narrowly than the 2016 rule. This proposal also does not require firms to execute contracts warranting compliance, and thus, does not impose similar liability and litigation risk as the 2016 rule.

Even so, this paper suffers from flawed assumptions. The paper assumes that, if the proposed rule becomes effective, no individuals with lower incomes and smaller accounts would receive investment advice. Not so. Many financial professionals already offer fiduciary investment advice across the income and asset spectrum. The paper also assumes that no firms would modify their businesses to become fiduciaries and serve these individuals. Yet many firms publicly announced in 2016 and 2017 that they would modify their businesses to comply with the 2016 rule and continue to serve small savers. In fact, several firms announced that they would *lower* account minimums, product costs, and commissions.

## The NAIFA "Survey"

This "survey" relies entirely on the *opinions* of members of the National Association of Insurance and Financial Advisors (NAIFA), a trade association for insurance professionals.[4] NAIFA members oppose the proposal because they would lose a lot of money if they were required to do what is best for their clients instead of themselves. Moreover, NAIFA members have been consistently exposed to NAIFA's hostile perspective about this issue for years. It is predictable that NAIFA members' responses would align with NAIFA's advocacy. It offers rhetoric and no useful value.

## Look to Reg. BI

Opponents offer scare tactics, including about commissions. Don't believe them. The Securities and Exchange Commission's (SEC's) Regulation Best Interest (Reg. BI) has demonstrated that investment professionals and firms can operate under an explicit best interest standard that requires the mitigation of conflicts of interest while still allowing investment professionals to be paid commissions. That also will be the case with the DOL proposal. Furthermore, there is no evidence that Reg. BI has reduced small savers' access to investment recommendations. Opponents of the proposed Retirement Security Rule have offered no real evidence that it will do so either.

## Conclusion

There are no industry "studies" that offer credible evidence about purported negative impacts of the proposed Retirement Security Rule. Instead, they offer opponents' antagonistic opinions designed to maintain their very profitable status quo. Many of the "studies" concern an entirely different proposal that was more onerous than the current proposal. Don't fall for them. The current proposal broadly aligns with Reg. BI and if Reg. BI works for broker dealers who fall under its jurisdiction, then this DOL proposal will work for those who fall under its jurisdiction.

---

[4] National Association of Insurance and Financial Advisors Advocacy, "Impact of the Proposed DOL Fiduciary-Only Rule on NAIFA Members," December 2023, https://bit.ly/3SuboEs.