FAQs: Protecting Retirement Savings

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1. What evidence is there that financial advisers' conflicts of interest harm savers? How much of an impact will the proposed rule have on these harms?

Based on extensive review of independent research, a White House Council of Economic Advisers (CEA) analysis found that conflicts of interest result in annual losses of about 1 percentage point for affected retirement savers—or about $17 billion per year in total. To demonstrate how small differences can add up: A 1 percentage point lower return could reduce your savings by more than a quarter over 35 years. In other words, instead of a $10,000 retirement investment growing to more than $38,000 over that period after adjusting for inflation, it would be just over $27,500.

The Department's regulatory impact analysis conservatively estimates that the proposed regulatory package would save investors over $40 billion over ten years, even if one focuses on just one subset of transactions that have been the most studied. The real savings are likely much larger as conflicts and their effects are both pervasive and well hidden.

These gains would be particularly important for the more than 40 million American families with more than $7 trillion in IRA assets and for the hundreds of billions of dollars that are rolled over from plans to IRAs every year. Advice regarding IRA investments and rollovers is rarely protected under the current rules.

2. What do you mean when you say "conflicts of interest"?

Advisers giving sound advice deserve to be well paid for the important work they do, helping workers build their nest eggs so they can retire after years of hard work. However, an adviser may have a conflict of interest if he or she gets paid for steering clients into one investment product instead of another. Clients are sometimes unaware of these payments because they can be hidden in fine print or not disclosed at all. These fees can give advisers an incentive to make recommendations that generate the highest fees for them, rather than the best investment return for their client. Independent research suggests that conflicts of interest are costing middle class families billions of dollars each year.

Many advisers do not accept conflicted payments, and not all who receive such payments respond by providing bad advice. Furthermore, there are many advisers who already commit to providing high-quality advice and always putting their client's best interest first. They are hardworking men and women who got into this work to help families achieve retirement security, and want a system that provides a level playing field for offering quality advice. But outdated regulations, loopholes, and fine print make it hard for working and middle class families to know who they can trust.

3. What is the Labor Department's role in regulating retirement investment advice?

The Labor Department is responsible for ensuring that the retirement savings vehicles used by America's workers – including traditional pensions and 401(k)-type plans – are secure and operated in accordance with federal pension laws and regulations. This includes setting the conflict of interest rules for both IRAs and employment-based plans. People with their retirement savings in these tax-favored retirement savings vehicles increasingly are looking for help in making decisions about investing in stocks, bonds, other securities, insurance, and banking products. The Labor Department's job is to help design and enforce rules and regulations under the federal pension law that help protect America's workers when they put their retirement savings in the hands of brokers and other financial advisers.

As the new proposal was being developed (which underwent interagency review before it was released for public comment), the Department consulted with staff from the SEC and Treasury as well as other regulators on an ongoing basis. SEC and Treasury staff have provided thorough technical assistance. As the final rule is shaped, the Department will continue to work closely with staff from the SEC, Treasury, and other regulators on the proposal and how to best align it with other regulatory regimes.

4. How are IRA protections different from the protections for pensions and 401(k)-type plans?

For traditional pensions (also called defined benefit plans), a fiduciary is required to manage the plan's funds to help assure that there will be sufficient assets to pay the monthly pension benefits promised under the plan. In a 401(k)-type plan, a fiduciary, who is often the employer, must select the investment options offered to employees covered under the plan. In either case, the law requires plan fiduciaries to act prudently and with undivided loyalty to the plan and its participants and beneficiaries. In other words, plan fiduciaries have to act in the worker's best interest. This provides retirement savers in employment-based plans with a level of protection that is often missing in the Individual Retirement Account (IRA) marketplace.

For IRA investors, there are few restrictions on investment choices, so savers may look to an expert financial adviser to help select the right product. These advisers may be brokers, insurance agents, registered investment advisers, or others holding themselves out as financial planning or retirement experts. These "advisers" are subject to different legal standards, and are not always required to act in their customer's best interest.

While investors often believe they are receiving impartial expert advice, many advisers have conflicts of interest. For example, they may receive a payment from a product provider if they convince their client to invest in one of the firm's products, even if that product is not the best one for their customer. As a result, investment recommendations may be based on the adviser's financial interest, rather than the best interest of the consumer.

5. What does the proposed rule require?

The Department believes the proposed regulatory package is a balanced approach that improves protections for retirement savers by ensuring that advisers provide advice in their client's best interest, while also minimizing any potential disruptions to all of the good advice in the market.

At its core, the proposed regulatory package is very simple: it requires more retirement investment advisers to put their clients' best interest first. It does this by closing existing loopholes and expanding the types of retirement advice subject to fiduciary protections. At the same time, the rule distinguishes activities that are not advice, like education and order-taking, and carves them out from the definition of fiduciary investment advice. It also includes broad, new exemptions that give fiduciary advisers flexibility to continue common fee and compensation practices so long as protections are in place to ensure that their advice is in their clients' best interest.

All of the provisions in the proposed regulatory package are open for public comment and the Department will carefully weigh those comments before finalizing the conflict of interest rule. Only after all the comments are reviewed will the Department decide what to include in a final rule–and even once a final rule is ultimately issued, it won't go into effect immediately.

6. What other approaches did you consider?

The Department considered a wide range of alternatives, informed by stakeholders ranging from consumer advocates to executives of financial services companies.

For example, we considered relying on disclosure alone to combat biased advice. But a large body of research has found that the effects of disclosures by themselves are limited and, in some cases, can lead to harms and weaker consumer protections. Indeed, many financial advisers already provide disclosures and the evidence suggests that they are not highly effective–consumers rarely understand how their advisers are regulated or paid, and can seldom effectively guard against the impact of conflicts, even when the conflicts are disclosed. Moreover, in practice, disclosures of conflicts of interest can actually backfire. Research in behavioral economics and psychology finds that when advisers disclose their conflicts, they may be more willing to pursue their own interest over those of their clients and thus give worse advice. Investors may interpret the disclosure as a sign of honesty and become more likely to follow an advisers' biased advice.

The Department also considered banning all payments to fiduciary advisers that create conflicts of interest, such as commissions and revenue sharing. This is the general approach taken in the prohibited transaction rules in ERISA and the Internal Revenue Code, though both allow the Department to create exemptions from these prohibitions. The United Kingdom and other countries have adopted this approach recently. The UK banned all financial advisers from taking commissions, to ensure that advisers simply would have no conflicting interest to pursue. However, the Department believes the more-tailored approach reflected in its proposal can significantly reduce the harms created by conflicts of interest, while continuing to allow for common forms of compensation.

Given that the Department of Labor does not propose to ban commissions but rather to establish safeguards to ensure that advisers provide advice that is in their client's best interest, we believe the proposed rule as crafted will preserve and expand access to good retirement advice for small savers and help them lay the groundwork for a secure retirement.

7. What does it mean to be a fiduciary? Why is it important that my adviser be a fiduciary?

ERISA and the Internal Revenue Code protect plans, plan participants and IRA owners by imposing fundamental duties on persons called "fiduciaries." Fiduciaries to plan sponsors and plan participants are required to act impartially and provide advice that is in their clients' best interest. In addition, fiduciaries to plan sponsors, plan participants, and IRA owners are not permitted to receive payments creating conflicts of interest without a prohibited transaction exemption (PTE).

Having a fiduciary as an adviser is important because, under the Department's regulatory package, it means that they are required to give you advice that is in your best interest, not their own.

8. Who would be treated as a fiduciary under the proposed rule?

ERISA and the Internal Revenue Code broadly define fiduciaries to include persons who give investment advice for a fee, regardless of whether that fee is paid directly by the customer or by a third party (for example, a firm that compensates the adviser for steering customers to one of its investments). The proposed rule revises a 40-year old Department of Labor rule to protect retirement savings and ensure that more retirement advisers in today's marketplace are treated as fiduciaries

Today large loopholes in the current rule's definition of retirement investment advice make it hard for middle-class families, and especially IRA owners, to know who they can trust to give them advice that is in their best interest. Under the proposed rule, an individual is a fiduciary if the person receives compensation for providing advice that is individualized or specifically directed to a particular plan sponsor, plan participant, or IRA owner for consideration in making a retirement investment decision. Such decisions can include, but are not limited to, what assets to purchase or sell and whether to rollover from an employer-based plan to an IRA. The fiduciary can be a broker, registered investment adviser or other type of adviser (together referred to as "advisers"), some of which are subject to federal securities laws and some of which are not.

The proposed rule carves out several activities from fiduciary status:

- **Retirement education.** General education on retirement saving does not trigger fiduciary duties. As an example, education could consist of general recommendations about the mix of stocks and bonds someone should have based on their age, income, and other circumstances, while avoiding suggesting specific stocks, bonds, or funds that should constitute that mix.
- **Order-taking.** As under the current rules, when a customer calls a broker and tells the broker exactly what to buy or sell without asking for advice, that transaction does not constitute investment advice. In such circumstances, the broker has no fiduciary responsibility to the client.
- **Sales pitches to plan fiduciaries with financial expertise.** Many large employer-based plans are managed by financial experts who are themselves fiduciaries and work with brokers or other advisers to purchase assets or construct a portfolio of investments that the plan offers to plan participants. In such circumstances, the plan fiduciary is under a duty to look out for the participants' best interest, and understands that if a broker promotes a product, the broker may be trying to sell them something rather than provide advice in their best interest. Accordingly, the proposed rule does not consider such transactions fiduciary investment advice if certain conditions are met.
- **Other carve-outs** include swap transactions with independent plan fiduciaries; mandatory plan reporting and disclosure filings; and certain communications with plan fiduciaries by the plan sponsor's employees.

9. What exemptions is the Department proposing from the prohibited transaction rules?

As noted above, ERISA and the Internal Revenue Code protect plan participants and IRA owners by imposing fundamental duties on persons called "fiduciaries."

Fiduciaries to plan sponsors and plan participants are required to act impartially and provide advice that is in their clients' best interest. In addition, fiduciaries to plan sponsors, plan participants, and IRA owners are not permitted to receive payments creating conflicts of interest without a prohibited transaction exemption (PTE).

Drawing on comments received and in order to minimize compliance costs, the proposed rule creates a new type of PTE that is broad, principles-based and adaptable to changing business practices. This new approach contrasts with existing PTEs, which tend to be limited to much narrower categories of specific transactions under more prescriptive and less flexible conditions.

Specifically, the "best interest contract exemption" allows firms to continue to set their own compensation practices so long as they, among other things, commit to putting their client's best interest first and disclose any conflicts that may prevent them from doing so. Common forms of compensation, such as commissions, revenue sharing and 12b-1 fees, are permitted under this exemption, whether paid by the client or a third party such as a mutual fund. This exemption is available to advisers to IRA savers, individual plan participants, and small plans. To qualify for the new "best interest contract exemption," the firm and individual adviser providing retirement investment advice must enter into a contract with its clients that:

- **Commits the firm and the individual adviser to providing advice in the client's best interest.** Committing to a best interest standard requires the adviser and the company to act with the care, skill, prudence, and diligence that a prudent person would exercise based on the current circumstances. In addition, both the firm and the adviser must avoid misleading statements about fees and conflicts of interest.
- **Warrants that the firm has adopted policies and procedures designed to mitigate conflicts of interest.** Specifically, the firm must warrant that it has identified material conflicts of interest and compensation structures that would encourage individual advisers to make recommendations that are not in clients' best interests and has adopted measures to mitigate any harmful impact on savers from those conflicts of interest. Under the exemption, advisers will be able to continue receiving common types of compensation as long as the adviser adheres to the exemption's consumer-protective conditions.
- **Clearly and prominently discloses any conflicts of interest**, like backdoor payments or hidden fees often buried in fine print, that might prevent the adviser from providing advice in the client's best interest. The contract must also direct the customer to a webpage disclosing the compensation arrangements entered into by the adviser and firm and make customers aware of their right to complete information on the fees charged.

In addition to this new best interest contract exemption, the proposed regulatory package revises many existing exemptions. It also includes a new exemption for principal transactions, which allows advisers to recommend certain fixed-income securities and sell them to the customer directly from the adviser's own inventory, as long as the adviser adheres to the exemption's consumer-protective conditions.

The proposal also asks for comment on whether the final package should include a new streamlined "low-fee exemption" that would allow firms to accept payments that might otherwise be deemed "conflicted" when recommending the lowest-fee products in a given product class.

10. How can I know if my adviser is acting in my best interest? Will the proposed rule have any teeth?

Under current rules, investors rarely know whether their adviser is supposed to act in their best interest. Many brokers, consultants, and advisers hold themselves out as expert advisers, but are not, in fact, required to adhere to a fiduciary standard. Under the proposed rule's updated definition of fiduciary investment advice, advisers to plan participants and sponsors are required under ERISA to provide investment advice in their client's best interest. Likewise, under the proposed rule and its best interest contract exemption, advisers to IRA savers are required to put their client's best interest first when recommending investments if they wish to continue receiving payments creating conflicts of interest.

The Department's proposed new rule will provide meaningful recourse for consumers when advisers abuse their trust and put their own financial interests first. Any such abuse will breach the adviser's obligation to act in their customers' best interest. Even if any single investor is hard pressed to spot the abuse, the proposed rule will help ensure that an adviser who makes a practice of such abuse is likely to be caught.

Under current law, the Secretary of Labor, a plan participant or plan fiduciary can bring a private right of action under ERISA if his or her adviser is a fiduciary and fails to provide advice in his best interest. By eliminating loopholes in the definition of a fiduciary investment adviser, the proposal would expand the circumstances in which plan participants and plan sponsors have these protections. In addition, the proposed regulatory package provides IRA customers with analogous protections. Under the proposed best interest contract exemption and principal transaction exemption, the financial companies overseeing IRA advisers will be contractually bound to establish policies and procedures that effectively combat abuses, and to make public disclosures of their fee practices that will enable competitors to shine a light on conflicted fee practices. Finally, the exemption will give DOL access to data that can reveal abusive patterns. Under the proposed rule and associated prohibited transaction exemptions, firms that do not already do so will have a strong incentive to create policies and business practices that encourage their representatives to give advice that is the best interest of their customers. And when they do not do so, firms can expect to be held liable for their breach of trust.

11. Is this proposal the same as the Department's 2010 proposed fiduciary rule?

No. In 2010, the Department put forward a proposal to achieve the same goal of requiring more retirement investment advice to be in the client's best interest, but did so in a very different way than the new proposal. While many championed the goals of the proposal, some stakeholders expressed concerns during the notice and comment period and at a public hearing. Critics of the 2010 proposal faulted the Department for having failed to include a sufficiently robust economic analysis on the need for the rule and its likely impact, particularly with respect to IRAs. Additionally, while the Department had expressed its willingness to grant exemptions from ERISA's prohibited transaction rules, it did not propose any specific exemptions as part of the initial regulatory package. In combination, these omissions created a mistaken impression for some that the Department was proposing to ban a wide array of existing compensation practices.

Mindful of these criticisms and wanting to arrive at the right answer, the Department decided to withdraw the rule in September 2011 and go back to the drawing board. Since 2011, the Department has taken the time to carefully consider the hundreds of comments received, including the testimony heard at two days of public hearings. Furthermore, the Administration has engaged extensively with stakeholders, meeting with industry, consumer groups, employers, Members of Congress, and academics—anyone who can help us figure out the best way to craft a rule that adequately protects consumers and levels the playing field for the many advisers doing right by their clients, while minimizing compliance burdens.

The new proposal reflects careful consideration of all that input and addresses key concerns raised about the 2010 rule. Specifically, the new proposal improves upon the 2010 version in a number of ways, both on process and substance:

Process

— **Includes exemptions alongside the proposed rule.** Responding to comments received in 2010, the Department is publishing the proposed exemptions alongside the proposed rule so interested parties have a better sense of how the fiduciary requirements and exemptions work together.

— **Based on consultations with the Securities and Exchange Commission (SEC) and other federal stakeholders.** Secretary Perez and Chair White have had numerous meetings and conversations, and SEC staff has provided thorough technical assistance and will continue these collaborative discussions.

— **Includes a more rigorous analysis of the anticipated gains to investors and costs.** Since 2010, the body of independent research on the costs and consequences of conflicts of interests in retirement investment advice has grown significantly. The Department is releasing a Regulatory Impact Analysis (RIA) alongside the proposed rule and exemptions that reflects that substantial body of research and estimates the gains to investors and costs of the proposed rule.

Substance

— **Provides a new, flexible, principles-based exemption that can accommodate and adapt to the broad range of evolving business practices.** Industry commenters have emphasized that the existing exemptions for fiduciary investment advice are too rigid and prescriptive, leading to a patchwork of exemptions narrowly tailored to meet specific business practices and unable to adapt to changing conditions. Drawing on these and other comments, the best interest contract exemption represents an unprecedented departure from the Department's approach to prohibited transaction exemptions over the past 40 years. Its broad, flexible, and principles-based approach is intended to streamline compliance and give industry the flexibility to figure out how to serve their clients' best interest.

- **Includes other new, broad exemptions.** For example, the new principal transactions exemption also adopts a principles-based approach. And the Department is asking for comments on whether the final regulatory package should include a new exemption for advice to invest in the lowest-fee products in a given product class, that is even more streamlined than the best interest contract exemption.
- **Expressly treats rollover and distribution recommendations as fiduciary investment advice.** In the 2010 proposal, the Department sought comments on whether rollover and distribution recommendations should be treated as fiduciary investment advice. The proposed rule does so in response to comments that continuing to exclude these types of recommendations from fiduciary protections would leave millions of individuals vulnerable to conflicted advice on one of the most significant financial decisions that they make.
- **Carves out investment education to IRA owners.** The proposal includes a carve-out from fiduciary status for providing investment education to IRA owners, and not just to plan sponsors and plan participants as under the 2010 proposal. It also updates the definition of education to include retirement planning and lifetime income information. In addition, it strengthens consumer protections by classifying materials that reference specific products that the consumer should consider buying as advice.
- **Determines who is a fiduciary based not on title, but rather the advice rendered.** The 2010 proposal stated that anyone who was already a fiduciary under ERISA for other reasons or who was an investment adviser under federal securities laws would be an important factor in determining whether they were also an investment advice fiduciary under the 2010 proposal. The new proposed rule looks not at the title but rather whether the person is providing retirement investment advice.
- **Limits the seller's carve-out to sales pitches to large plan sponsors with financial expertise.** The 2010 proposal included a carve-out from fiduciary status for sales pitches to IRA investors, plan participants, and plan sponsors. The new proposal limits this carve-out to large plans and large money managers in light of their financial expertise. This change is in response to comments that differentiating investment advice from sales pitches is very difficult in the context of investment products and, unless the advice recipient is a financial expert, the carve-out would create a loophole that would fail to protect investors.
- **Excludes valuations or appraisals of the stock held by ESOPs from the definition of fiduciary advice.** The proposed rule clarifies that such appraisals do not constitute retirement investment advice subject to a fiduciary standard. DOL may put forth a separate regulatory proposal to clarify the applicable law for ESOP appraisals.
- **Includes other new carve-outs from fiduciary status** for swap transactions with independent plan fiduciaries; mandatory plan reporting and disclosure filings; and certain communications with plan fiduciaries by the plan sponsor's employees.

There will be opportunities to submit comments in writing and in a public hearing on all of the provisions in the proposed rule as well as the economic analysis and all of the new proposed and amended exemptions. Only after reviewing all the comments will the Department decide what to include in a final rule—and even once we issue a final rule, it will not go into effect immediately.

12. Is this proposed rule necessary? Aren't my retirement savings already protected by the SEC, FINRA and state regulators?

Retirement savings are supposed to receive special protections under federal retirement and employee benefits law. However, the regulations underlying these laws on retirement advice have not been updated in almost 40 years. When the Employee Retirement Income Security Act of 1974 (ERISA) was first passed 40 years ago, professional pension managers were the ones making complex decisions on retirement investing. Individual Retirement Accounts (IRAs) were created at the same time, and 401(k) plans did not even exist. But there has been a dramatic shift in our retirement system in the intervening decades: today, workers are largely responsible for managing their own savings through 401(k)-type plans and IRAs, and so millions of

Americans turn to experts for advice on how much to save and how to manage those savings. With $7.3 trillion invested in IRAs and more than $4 trillion in 401(k)-type plans, we need to modernize these outdated rules that were designed for a world where those decisions were made by professional pension managers, not individual workers.

Under these outdated rules, savers cannot count on the retirement investment advice they receive being in their best interest because many advisers do not abide by what is called a "fiduciary standard." In other words, today's rules allow financial advisers to put their bottom line ahead of their clients' retirement security. This is especially true for rollovers and IRAs, which almost never receive fiduciary protections under the current ERISA and tax rules. Recent studies show that the vast majority of Americans understandably believe their financial advisers are required to act in their clients' best interest. But the reality is very different.

Many advisers do put their clients' best interests first. They are hard working men and women who got into their jobs to help families achieve a secure retirement. But some do not, and the current rules make it harder for all of the financial advisers who are trying to do right to compete—and hard for consumers to know whom to trust. Independent research suggests that conflicts of interest are costing middle class families billions of dollars per year.

The proposal would require retirement investment advisers to put their clients' best interest first.

The SEC has a separate related authority to regulate securities markets. And while securities in tax-preferred retirement savings accounts are regulated by both the Department and SEC, there are many transactions involving retirement savings (like advice to purchase some insurance annuity and bank products) over which the SEC has no jurisdiction to protect consumers. The same is true of FINRA. Meanwhile, the states have a patchwork of laws that fill in only some of the cracks.

The proposed rule uses the Department's authority to ensure that retirement investment advice will be uniformly treated as fiduciary advice. Advisers covered by the proposed rule and exemptions will be obligated to put the customer's interests first and adhere to fiduciary standards. This will be a change for many advisers in the retirement market today who are not currently required to adhere to these standards. Change is past due. The ERISA regulations on retirement investment advice have not been updated in almost 40 years. The rules need to be modernized to address a changing retirement landscape and the billions of dollars lost to conflict of interests each year.

13. Why not wait for the SEC to act first?

Middle class and working Americans who have worked hard to save for retirement should not have to wait any longer to get the security that comes from knowing that their advisers are acting in their best interest.

The Department of Labor has an obligation to fulfill its statutory responsibility to protect retirement savers. Because of the special tax-favored status of retirement investments, Congress created a set of legal rules and enforcement mechanisms to protect retirement savers that is separate and independent from the SEC and federal securities laws. As both Secretary Perez and Chair White have observed, the Department and SEC each have an important yet separate and independent role to play in protecting investors. Moreover, there are many transactions involving retirement savings (such as advice to purchase some insurance annuity and bank products) over which the SEC has no jurisdiction to protect consumers, but the Department does.

The Department has worked closely with the SEC and other regulators to ensure that the proposed rule is as consistent as possible with other regulatory requirements, and to avoid creating situations in which compliance with the securities laws would conflict with compliance with ERISA, and vice versa. We believe the proposed rule and exemptions would avoid that problem. But if there are areas that cause concern for stakeholders, we hope they will be identified during the opportunities for public comment. As we move forward to finalize the proposed rule, we plan to continue to work with the SEC on these technical issues, recognizing that our approaches to specific issues may differ given our different statutory responsibilities.

14. Will savers with small balances lose access to financial advice or investment products as a result of this rule?

Plenty of retirement investment advisers already put their customer's interests first, proving that you can provide advice that is in the best interest of all kinds of savers – including those with small balances – while running a successful business. And there are many low-cost options already available, with more becoming available due in part to advancements in financial technology. But backdoor payments, complicated and hidden fees often buried in fine print, and supposedly free advice that is conflicted may make it difficult for new entrants providing quality, low-cost advice to compete. The proposal would level the playing field for all the firms providing quality, low-cost advice. In addition, the Department's proposed rule does not treat general retirement and investment education as fiduciary advice, so employers and advisers can continue to provide general information on things like the mix of stocks and bonds a person should have in their portfolio based on their expected date of retirement and how much is needed to be saved for retirement without triggering fiduciary duties.

The Department is not proposing to prohibit common compensation practices, such as commissions and revenue sharing. Instead, the regulatory package gives firms the flexibility to figure out how to structure their business in order to provide quality advice that is in their clients' best interest. Other countries, such as the United Kingdom and Australia, have fully banned commissions that so far appear to be achieving the aim of greatly improving advice without significantly disturbing access to it. Given that the Department is not proposing to ban commissions or other common types of compensation, but rather to require advisers to provide advice that is in their client's best interest, we believe the proposed rule as crafted preserves and expands access to good retirement advice for small savers and helps them lay the groundwork for a secure retirement.

15. How will the proposed rule affect small advisory firms and individual advisers?

Small firms play a critical role in providing advice, especially to many savers with small balances. Many of these small firms want to do their very best for their clients and that is why many already comply with a fiduciary standard—serving their clients' best interests while making a profit. And since the proposed rule does not prohibit common compensation practices, proprietors of small firms will be able to continue operating their businesses in the way that makes sense for them so long as they put their clients' best interest first.

But today some large financial companies pressure independent advisers to recommend products that profit the company the most over those that are better for investors. Under the proposal, mutual funds, insurance companies, and broker-dealer firms that contract with independent advisers will need to adapt their practices to lift this pressure and instead reward financial advisers more for doing what is right for their clients—making it easy for independent advisers to follow and succeed under the new rules.

This proposal is about leveling the playing field so independent advisers who put their clients first aren't squeezed out of the market by the unfair practices of advisers who don't act in their clients' best interests.

16. Will the proposed rule cause me to lose access to retirement and investment education?

No. The financial services industry plays an important role in providing retirement and investment education to workers and retirees. The new proposal aims to provide greater clarity in the line between education and advice, so that advisers and plan sponsors can continue to provide general education on retirement saving without triggering fiduciary responsibilities. As an example, education could consist of general information about the mix of investments (e.g. stocks and bonds) someone should have based on their age, income, and other circumstances, while suggestions about the specific stocks, bonds, or funds that should constitute that mix would constitute advice. We believe this greater clarity on the distinction between education and advice will facilitate the provision of education, not inhibit it.

17. Will the proposal rule and exemptions mean that I can only get advice on my retirement savings if I pay the adviser a flat fee that is a percent of all of my savings?

No. The proposed regulatory package does not require advisers to move to a fee-based business model. Because the proposed regulatory package does not prohibit common compensation practices, advisers will be able to continue operating their businesses in the way that makes sense for them while putting their clients' best interest first.

18. Won't advisers have to worry about being sued every time a retirement investor loses money?

No. Consistent with forty years of ERISA case law, a fiduciary's investment recommendation is assessed based on the circumstances prevailing at the time of the transaction, not on how the investment turned out with the benefit of hindsight. As a practical matter, firms protect themselves from litigation by using a reasonable process to assess a customer's financial circumstances, risk tolerance, and need, and by making professional recommendations in light of those considerations.

Courts are familiar with this standard and focus on the process the fiduciary used to make its recommendation and its exercise of reasonable judgment at the time, rather than the subsequent results.

Additionally, individuals are likely to bring suit only in the most egregious cases and after having attempted to work out any complaints with the adviser. And firms will have the option to mandate arbitration of individual cases, so long as they allow groups of affected individuals to have their day in court.

19. Has the Department finalized a new rule?

No. The Department has issued for public comment a proposed rule and proposed prohibited transaction exemptions addressing conflicts of interest in retirement investment advice. The regulatory process allows for many opportunities for public input, including written comments and oral testimony, and the proposal is subject to change based on this input.

The proposed rule is issued as a document called a "Notice of Proposed Rulemaking" (NPRM) that describes in detail how the Department is proposing to revise its existing 40-year-old rule governing the conduct of individuals who provide retirement investment advice to plans, participants and beneficiaries, and IRA owners. It describes how the Department proposes to reduce the conflicts of interest that these advisers may have and asks questions of the public and stakeholders, seeking input on how to craft a final rule that meets the goal of protecting retirement savers from bad advice while doing so in the least disruptive way possible.

In addition to the proposed rule, the Department is also proposing several new and amended prohibited transaction exemptions, along with its regulatory impact analysis so the public can see how the Department calculated the expected gains to investors and costs of the proposal.

We encourage the public to provide input and comment on the entire proposal. Only after reviewing all the comments will the Department decide what to include in a final rule and in the final exemptions–and even once the Department ultimately issues a final rule and final exemptions, they won't go into effect immediately.

20. How can I share my views on this issue with the Department?

The Department strongly encourages all interested parties to give feedback on the proposal. The Department will hold a public hearing and accept written comments, so anyone who wants to comment on any aspect of the proposal has that opportunity. You may go to Regulations.gov, "Your Voice in Federal Decision-Making," which allows you to search for and view a description of rules currently open for comment, read full texts of the documents, and submit comments. You can also submit comments directly to the Department of Labor by email, mail, by hand, or by courier.

Publishing the proposal is just one step in the regulatory process. The proposal is subject to change based on feedback received at each step, and we want the public to weigh in extensively throughout the process.