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Testimony

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PUBLIC CITIZEN

before

United States Department of Labor

Improving Investment Advice for Workers & Retirees

On behalf of more than 500,000 members and supporters of Public Citizen, I offer the following comment on the Department of Labor's (DOL) new retirement advice rules.

Currently, I am the financial policy advocate for Public Citizen. Formerly, I served as director of the Teamsters Office of Corporate Affairs, where we intersected with some of the mammoth Teamster pension funds, such as Western and Central States. Building on the precepts of the DoL's Avon Letter, we became among the most prodigious of shareholder resolution activists. We note with loathing that the DoL now proposes to gut the Avon letter, part of anti-accountability scheme I will address at the conclusion of these remarks. I have also served as managing partner of the Rolyan Fund, an investment LLC. And I served as chief of investigations for the U.S. Senate Banking Committee. These professional experiences, at both policy and retail engagement with Wall Street, have impressed upon me that the details that the DoL now proposes can have sweeping impacts on the integrity of American investment.

We oppose the proposed exemption allowing investment advice fiduciaries to recommend products where the commission received can compromise the fidelity of said advice.

At stake is the retirement security of American workers and retirees who will now be exposed to suspect gambles. There's a reason some investment products generate the advisor more commission prize money than other products: they're not readily "bought;" they're not popular, proven products. They must be "sold" precisely because they can be dangerous.

Many of Public Citizen's members are retirees. While they are astute, well read, and engaged with current events involving corporations, they should still not be exposed to professional scam artists. The Bernie Madoff scandal, which involved investment victims-- some of whom were leaders in their fields such as Steven Spielberg, Elie Wiesel, and Larry King-- attests that smart people can be misled and fleeced.

The landscape for retirees has become more treacherous in the last half-century. Defined contribution retirement accounts, where the retiree must make sound decisions, have replaced defined benefit pensions, where the retiree was guaranteed a set retirement income, as the primary form of workplace retirement plan. Workers must not only be capable brick layers; they must also be smart brokers of their savings. The self-directed Investment Retirement Account (IRA) is a major source of retirement protection for some 36 percent of U.S. households. And gone are the days when the basic options were either bonds or stocks. The landscape is crowded with new devices, some useful, but others designed to separate the saver from her savings.

That makes honest investment advice critical. It is obvious from the very name of major institutions that the investment advisors know that enduring security, honesty and fair dealing rank high on the investors' minds: Fidelity, US Trust, Blackrock. Yet history shows that names can deceive: Lincoln Savings & Loan (presumably named for Honest Abe) and Bankers Trust both failed after scamming depositors and

Proctor & Gamble derivatives customers respectively. This list of deceptively named institutions that scammed customers is very long.

For the record, I ask that the following studies be considered.

1. A study on variable rate annuities published by NYU, already referenced by Mr. Certner of AARP. finds that fiduciary advice standards improve returns to investors without significantly increasing compliance costs.
2. A study on broker misconduct, published by NBER that finds only 54% of respondents trust Wall Street to "do what is right."
3. And a survey on trust in Wall Street sales agents: Earning Investors' Trust - 2020 survey with a a good summary here. A former senior official of Merrill Lynch said, sincerity is most important in winning the trust of customers, and if you can fake that, you've got it made

With this context, the Department of Labor now proposes to expose retirement savers to greater risks.

The DOL proposes to return to some of these scandalous days and allow sales agents who fly under the banner of fiduciaries to sell products that maximize their commissions, and not the stable returns to the investor. This borrows from and compounds the harmful actions by the Securities and Exchange Commission (SEC), which recently implemented Regulation Best Interest (Reg. BI).

There will also be no mechanism for IRA investors to enforce infractions of the remaining tissue-thin protections offered by the proposed rule. There is no private right of action. Nor can the DOL enforce the standard as it applies to IRAs.

These flaws are fatal.

Of course, the DOL does not confess that these changes are intended to help the potential wrongdoing of those Wall Street firms whose names are meant to convey trust. It falsely claims that these changes will help protect investors. This sham reasoning is not dissimilar to the deceptions that Public Citizen members will now be forced to confront if this proposal moves forward.

This change is part of a much wider, cynical, anti-consumer, anti-investor, and yes, even a racist agenda. Last week, the DoL proposed to eviscerate the Avon letter, foundational in promoting institutional investor attention to needed reforms brought by grass roots investors on issues from climate change, political spending corruptions, and human capital management. It adds to the SEC's censorship of proxy advisory firms, and the forthcoming disqualification of shareholder resolution proponents. Elsewhere, the CFPB's reversed of reforms of loan shark payday lending, at a time of induced economic coma that has left millions unemployed. And the OCCs unilaterally derailed the Community Reinvestment Act, one of banking law's key tools to combat racist lending. These are all shameful policies

It should be revealing that all consumer advocates oppose this investment advice rule, and only industry agents support it, although they object to the few protections. That's hardly a record of endorsement. If you don't have AARP, you can't proceed.

We ask the DOL to withdraw at least this proposed change.

Thank you