# Feds proposed fiduciary rule: Will it help or hurt?

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Financial services firms worry the Department of Labor's proposal to strengthen retirement advice will disrupt business models and increase red tape, compromising clients' access to their services, public comments reveal. With less than two weeks remaining in the comment period, the government has received more than 140 remarks on proposed regulations that would increase transparency in the delivery of retirement advice.

Comments range from the pithy —"I support the new proposed rule" reads one in its entirety— to pleas by firms for more time to digest the voluminous proposal. The public comment period is scheduled to end July 21. Read the comments here.

Amid the boilerplate remarks cataloged on the department's website, one comment stood out: "Our country does not have a fiduciary and compensation transparency problem," wrote a registered investment adviser in St. Paul, Minn. "IT HAS A SAVING PROBLEM!" In other words, she wrote, erecting more hurdles for those providing retirement advice isn't going to fix Americans' woeful savings habits; instead, it's only going to impede the flow of much-needed counsel to people who desperately need it.

America indeed has a saving problem. Among households age 55 and older, about 29% have neither retirement savings nor a pension plan, according to a report this May by the Government Accountability Office. Among those with some retirement savings, the median amount of those savings is not nearly enough to fund a retirement that could last for decades: $104,000 for households age 55 to 64 and $148,000 for households age 65 to 74.

## Raising the standards on IRA advice

The Department of Labor proposals are designed to help at a critical juncture in retirement preparations: when savers roll over a company 401(k) plan into an individual retirement account (IRA). While Americans saving in 401(k) plans are generally limited to the investment choices offered by their employer's plan, they do enjoy government protections regulating the plan.

Yet when workers leave their job and roll their 401(k) into an IRA, the universe expands exponentially: not only do they have many more fund choices, but the advisers who provide advice on choosing funds are not held to uniformly high standards. "The vultures in the industry came after the IRAs, because they couldn't get into the 401(k)s," said Mitch Tuchman, managing

director of Rebalance IRA, a registered investment advisory firm that helps clients manage retirement funds.

Brokers are currently held to a “suitability” standard, which requires only that they sell products that are suitable for a client. Many of these advisers are paid on commission, which can give them an incentive to steer clients toward the investment products that offer the advisers the fattest payout. So-called “conflicted advice” costs American savers a collective $17 billion a year, according to a report from the White House Council of Economic Advisers.

The proposed rules would require financial professionals who provide advice to IRA owners to be held to a so-called fiduciary standard — that is, they must always put the clients’ best interest ahead of their own.

Registered Investment Advisers (known as RIAs) are today held to that higher standard. While these regulatory distinctions among professionals are well known within the industry, many clients don’t understand them and assume that all advisers must offer unbiased advice in the client’s best interest.

## Objecting to the implementation, not the standards

Many financial firms say they support brokers being held to a fiduciary standard when engaging in the same activities as registered investment advisers. Bad actors in the industry are rare, they say, and most brokers who work on commission already act with integrity.

Instead, “the debate is not if, but how we should implement such a standard,” said Kenneth E. Bentsen, Jr. president and CEO of SIFMA, a securities industry trade group, in remarks before the Bipartisan Policy Center in May. As proposed, many of the regulations are highly impractical, industry members have said.

These include the provision that firms and individual brokers who accept commissions or other fees sign a legally binding contract to act in their client’s best interest when doing so. Requiring these parties to sign a contract for each interaction could be prohibitive, especially in big firms that serve thousands, if not millions, of prospective and current customers through call centers. The best interest contract provision is “unworkable,” Jack Haley, Jr. executive vice president of Fidelity Investments, testified before a Senate committee last month.

Lower and middle-income investors will be hurt the most if the regulations go into effect as proposed, critics argue. These are the consumers without the hefty account balances required to engage a registered investment advisory firm, which typically charges an annual fee of 1% of assets under management.

And yet, the recent rise of automated investment services — also known as robo advisers — challenges that argument. Acting as registered investment advisers, firms such as Betterment provide portfolio construction and management services for consumers with no minimum investment for fees as low as 0.15% to 0.35% of assets under management.

The Department of Labor’s proposed regulations do not require congressional approval and could be implemented once the public comments have been considered.