

## ICI VIEWPOINTS

APRIL 12, 2024

# The DOL's Hurried Fiduciary Rule Poses Lasting Harm to Investors

By Elena Barone Chism

When it comes to their investments, Americans enjoy more information, choice, and access to advice than ever before. And the costs of investing have [plunged](#) over recent decades, further empowering millions of Americans to achieve a secure retirement.

Regrettably, the Department of Labor (DOL) is rushing to finalize a *fiduciary advice rule* that threatens to roll back that progress. If implemented, the rule would lead to fewer choices in the marketplace and less access to financial advice and guidance—losses that would fall heaviest on middle-class investors.

## Less Financial Guidance

The rule marks yet another attempt by the DOL to redefine fiduciary advice following several failures last decade, including a 2016 final rule that a federal court ultimately [struck down](#). Like earlier efforts, the DOL's latest attempt hopes to enhance protections for participants in 401(k) and other employer-sponsored [ERISA](#) plans. It also aims to prevent situations in which rollovers from those plans into individual retirement accounts (IRAs) aren't in the investor's best interest.

ICI wholeheartedly supports protecting individual investors. But the DOL's fiduciary rule doesn't do that. In fact, it would impede investors' access to important investment information, guidance, and tools.

Retirement savers and employer plan sponsors would get less help at many critical points, such as when they consider:

- Establishing a 401(k) plan or retirement account.

- How to allocate assets among available products or strategies.
- Whether or not to roll account balances to an IRA or keep assets invested in a current plan.
- What type of lifetime payment option or distribution strategy may be appropriate.

Online educational materials, information from call center representatives, and basic tools such as automated *nudges* that promote retirement saving could be considered fiduciary advice under the rule. Those forms of guidance would become subject to a whole new set of legal and compliance burdens, likely leading retirement plan providers to curtail their use.

Additionally, retirement savers would have fewer choices for the type of investment professional they want to work with.

## Harder to Efficiently Manage Retirement Assets

The rule would also impact individuals' ability to consolidate and keep track of retirement savings over the course of their careers. When workers change jobs, they commonly roll over assets from a previous employer's retirement plan into an IRA. There are many reasons an individual might roll over assets, including potentially gaining access to investment strategies not offered in a prior employer's plan, attaining fee breaks or other benefits by bringing assets under the management of a single firm, or streamlining retirement saving.

Under the rule, however, any communications regarding those rollovers could be treated as fiduciary advice, significantly increasing the compliance burdens and liability associated with them. That would likely result in far fewer rollovers, making it harder for many workers to efficiently manage their retirement assets.

In treating all rollover discussions as fiduciary advice, the DOL assumes that investors lack basic judgment when rolling over their money. While it's certainly true that not all investors have a deep understanding of financial markets—after all, that's why they rely on financial professionals—the [data](#) show that they respond to market forces, make asset allocations reflecting basic investment principles, and are engaged in the decision-making process around IRA investing.

## Potential to Raise Costs

The rule's overly broad application of a fiduciary standard brings considerably higher liability exposure and additional compliance obligations that would necessarily increase the costs of providing services. While many financial services firms are likely to respond by curtailing services, those that accept the broader fiduciary status would be saddled with [billions of dollars](#) in additional expenses. That would ultimately raise the costs that investors bear when building toward retirement.

Making matters worse, the DOL's proposal fails to document a single dollar of benefits justifying those additional costs, one of several [issues](#) with the DOL's economic analysis.

## A Reckless Endeavor

Despite fundamental problems with the rule and countless complaints from individual investors and industry participants alike, the DOL is fast-tracking its final rule through the approval process.

ICI shares the DOL's desire to ensure investors receive sound financial advice. But not only does this rushed regulation fall short in that regard, it jeopardizes the availability of innovative tools and educational resources that have made it easier for everyday Americans to save successfully for retirement.

The DOL should withdraw the fiduciary rule immediately before it recklessly harms middle-class savers.

*Elena Barone Chism is Deputy General Counsel, Retirement Policy, at ICI.*

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete.

Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.