

National Organization for Women



July 21, 2015

Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Conflict of Interest Rule, RIN 1210-AB32
Proposed Best Interest Contract Exemption, ZRIN: 1210-ZA25

Dear Ladies and Gentlemen:

The National Organization for Women has advocated for nearly a half-century for the economic well-being of women and their economic security in retirement is a particular focus of our current work. We strongly support the Department of Labor's (DOL's) proposed conflict of interest rule. This rule's mandate to provide investment advice in their client's best interest would especially benefit women who can ill afford to have their retirement savings diminished as a result of financial advisers' conflict of interest. We understand that women and modest savers are disproportionately served by non-fiduciary advisors and need the proposed protections to ensure their retirement savings grow safely. A clear fiduciary rule would benefit women and modest savers by assuring that their advisers have the investor's best interest at heart and would discourage any potential exploitation that would put their retirement investments at risk.

Currently, many women face a retirement savings crisis as women are more likely than men to suffer financial insecurity throughout life. This is due, in large part, to the fact that women in all occupational categories continue to be paid lower wages and salaries than their male counterparts for comparable work. The well-documented gender and gender/race wage gaps cause career span losses of approximately \$700,000 for high school educated women, \$1.2 million for women who graduated from college, and \$2 million for women who graduated from professional school.¹ The cumulative income loss during a woman's working career results in serious shrinkage of their retirement "nest egg."

During retirement, women have less income than their male counterparts because retirement benefits are based on their lifetime earnings. Several factors contribute to this problem: the disappearance of defined benefit pensions, less income due to sex-based and race-based pay discrimination, time taken out of the paid workforce for caregiving and much smaller amounts to save and invest for retirement. In 2013, the median annual income of older women was less than 60 percent of the median annual income of men the same age. This difference for the average retired woman means \$13,000 less to live on each year,² as noted by the American Association of University Women and the National Women's Law Center. Additionally, women have retirement accounts with balances, on average, lower than 50

¹ See The American Association of University Women, AAUW Quick Facts, The Gender Pay Gap, January 2015, <http://bit.ly/leMr2XO>.

² *Id.*

percent of men's.³ Especially as women can now expect to outlive men by approximately three years, they need to begin saving for retirement earlier and save in higher amounts. On the whole, women investors cannot sustain losses incurred as a result of bad investment advice or excessive fees. One very unfortunate outcome is that a significant number of older women live very close to the poverty line and as they become more elderly their reduced economic circumstances grow more dire.

Surveys tell us that women are more likely than men to lack investment knowledge⁴ and to seek advice from a paid financial advisor.⁵ They are therefore more susceptible to being given poor advice against their own interests which will harm them financially and negatively affect their quality of life during retirement years. (And we now know that women of color have been targeted by financial institutions for abusive subprime loans.) The best way to ensure that women's interests are addressed is to close loopholes allowing financial advisers to offer retirement investment advice without being subject to a fiduciary duty requiring them to serve their client's best interest. This would be achieved by the DOL's proposed rule that includes a requirement that advisers and firms legally and openly agree to meet the retirement saver's best interest and prohibit charging more than a reasonable fee for services. Firms would have to attest that they are not motivating their advisers to act in their own interests rather than those of their customers; advisers would have to disclose how much their advice and products would cost in the short and long term. Investors would also be able to hold advisers accountable for losses resulting from conflicted advice.

Even as they face sex-based pay discrimination leading to less income and retirement savings, women are doing their part by saving at rates 7 to 16 percent higher than men across every income group.⁶ The DOL is now doing its part by proposing a rule that would ensure women's retirement savings are maximized rather than depleted due to conflicted interests of their financial advisers.

Some in the financial services industry have claimed that the proposed DOL rule's new restrictions would make investment advising services far more expensive, cutting off access for modest savers. This concern, we believe, is exaggerated as the rule would not prohibit advisers from collecting fees or commissions. While some firms may decide it is no longer profitable to advise modest savers as their profits currently come from giving conflicted advice and diminishing their clients' retirements, many other firms have demonstrated that it is possible to advise modest savers as fiduciaries and continue to profit.

Another attack against the DOL's proposed rule is that high compliance costs would outweigh benefits and put small firms out of business. It is estimated by the Consumer Federation of America that over the next ten years, compliance will cost investment firms and advisers total between \$2.4 and \$5.7 billion. This figure may appear large until it is compared to the estimate that the rule would save retirement investors between \$40 and \$44 billion, currently being lost to excessive fees and poor investment advice, over the same period. The concern over harming small firms is also inflated as the rule would not put significant burdens on small firms who are already providing high quality advice to their clients at reasonable costs, as most small firms are assumed to do.

³ The Vanguard Group, How American Saves 2015, A report on Vanguard 2014 defined contribution plan data <http://vgi.vg/1NjzhFv>.

⁴ Study Regarding Financial Literacy Among Investors, As Required by Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Staff of the Office of Investor Education and Advocacy of the U.S. Securities and Exchange Commission, at vii-viii, August 2012, <http://1.usa.gov/1fMABVZ>.

⁵ Fidelity Investments, Are Women Standing Up to the Retirement Savings Challenge? Women in Investing, 2013, <http://bit.ly/1GObThC>.

⁶ *Id.*

Further, the proposed rule would not significantly restrict adviser's recommendation options as there is a carve out allowing advice to be given regarding large employer-sponsored plans with either over 100 employees or over \$100 million without triggering a fiduciary responsibility. Many adviser services, such as order-taking and administrative activities, would also not trigger a fiduciary responsibility under the new rule. Not all forms of compensation for advisers involve conflicts of interest. Therefore, not all forms of compensation should or will be banned by the new rule. The rule still allows for firms to provide educational information about various options without incurring fiduciary responsibility and also sufficiently limits adviser liability. The rule evaluates investment plans for compliance with standards at the time of investment and thus does not put advisers at increased risk of incurring liability if a plan that was in the best interest of the client at the time of investment ends up incurring losses. On balance, the proposed rule appears fair to both the profession and to the client.

Women are disadvantaged in terms of building economic security for retirement and cannot afford to have their savings diminished by receiving advice against their best interests. Women are increasingly making financial and investment decisions for their families and need protections to ensure that their adviser is not solely trying to make a self-interested financial gain. The proposed DOL rule would take important steps towards ensuring women receive beneficial retirement investment advice and can seek redress if they are harmed by advisers acting against their best interests. We urge the DOL to finalize and implement this rule as quickly as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry O'Neill", with a stylized flourish at the end.

Terry O'Neill
President