consumer action

Education and advocacy since 1971

Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

July 9, 2015

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

Dear Secretary Perez:

Consumer Action[1] strongly supports the conflict of interest rule proposed by the Department of Labor (DOL). This rule would significantly advance protections for consumers who are saving for retirement by requiring that financial advisers provide advice in their clients' best interest.

Without such a rule, many retirement savers will continue to risk losing large amounts of money to hidden fees, unsafe investments and poor advice. Fiscal advisers currently are permitted to provide financial guidance that primarily serves their own self-interest, at their client's expense, and your proposed rule would correct this.

This rule to limit conflicted advice is needed now more than ever, as consumers can no longer rely on pensions—and professional pension managers—to be responsible for their retirement savings and earnings. Today, all but the most sophisticated consumers are reliant on whatever advice (or sales pitch) is offered by financial advisers and brokers as they struggle to make important, complex evaluations about essential retirement resources. Many retirement investors realize that they do not have the knowledge or expertise to make informed retirement decisions, so they turn to financial professionals for help. However, these advisers may have no legal obligation to serve their clients' best interests. What's more, most consumers cannot distinguish between

[1] Consumer Action has been a champion of underrepresented consumers since 1971. A national, nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers to advance consumer rights and promote industry-wide change particularly in the fields of credit, banking, housing, privacy, insurance and utilities. www.consumer-action.org.

By providing consumer education materials in multiple languages, a free national complaint hotline, a comprehensive website (www.consumer-action.org) and annual surveys of financial and consumer services, Consumer Action helps consumers assert their rights in the marketplace and make financially savvy choices. Nearly 8,000 community and grassroots organizations benefit annually from its extensive outreach programs, training materials, and support.

qualified financial professionals and people without the necessary expertise. Consumers should not have to be able to interpret the difference in order to receive advice that is in their best interest.

Without a fiduciary duty, financial advisers may steer consumers into costly, high-risk investments that drain clients' hard-earned savings and maximize their own profits. While many advisers do serve their clients' interests, compensation and company profit expectations can get in the way. If an adviser is paid much higher commissions for one product vs. another, it's little surprise that some choose to pad their own pockets, rather than consider their clients' needs. The DOL proposed rule would solve this dilemma by imposing a legal duty on financial advisers to put their clients' interests first.

When financial advisers prioritize their own interests, the cost to retirement savers can drain critical funds slowly but steadily over time. The DOL's own analysis estimates that a retirement saver who rolls money out of a 401(k) plan and into an IRA, based on conflicted advice, can expect to lose 12 to 24 percent of the value of his or her savings over 30 years. These are funds that people in need of retirement security cannot afford to lose.

The harm that consumers suffer as a result of conflicts of interest can have profound effects on how they'll spend their retirement, including where they'll be able to live, what they'll be able to afford to eat, and whether they will be able to be self-sufficient. If consumers have fewer savings during retirement because of poor advice and self-centered incentives, they may become more dependent on state and federal programs to cover their shortfall, which disadvantages all taxpayers.

The DOL's proposed rule will help investors with smaller retirement accounts who can least afford to lose earnings to unnecessarily high commissions and fees and inappropriate account products. The proposed rule still permits advisers to collect commissions while making financial recommendations that best suit their clients' interests. Consumers would also benefit by receiving important disclosures showing savers how much they are paying for the products their adviser recommends. If financial firms or advisers breach any of the contractual provisions, retirement savers would also be able to hold them liable for any losses that resulted from the breach.

We would add one important recommendation to improving the rule: Ban mandatory arbitration clauses in investment contracts. Arbitration should be a tool that is used voluntarily when it suits both parties in a dispute, without stripping investors of their right to a trial by judge or jury. Binding, mandatory arbitration is an opaque, unfair process that benefits the brokerage industry, not retail investors.

We urge the DOL to implement this common sense rule to help protect consumers' retirement savings from expensive, unnecessary and damaging fees and risks.

Sincerely,

Linda Sherry

Linda Sherry
Director, National Priorities