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Here is what's at stake with the conflict of interest ("fiduciary") rule

Report • By Heidi Shierholz and Ben Zipperer • May 30, 2017

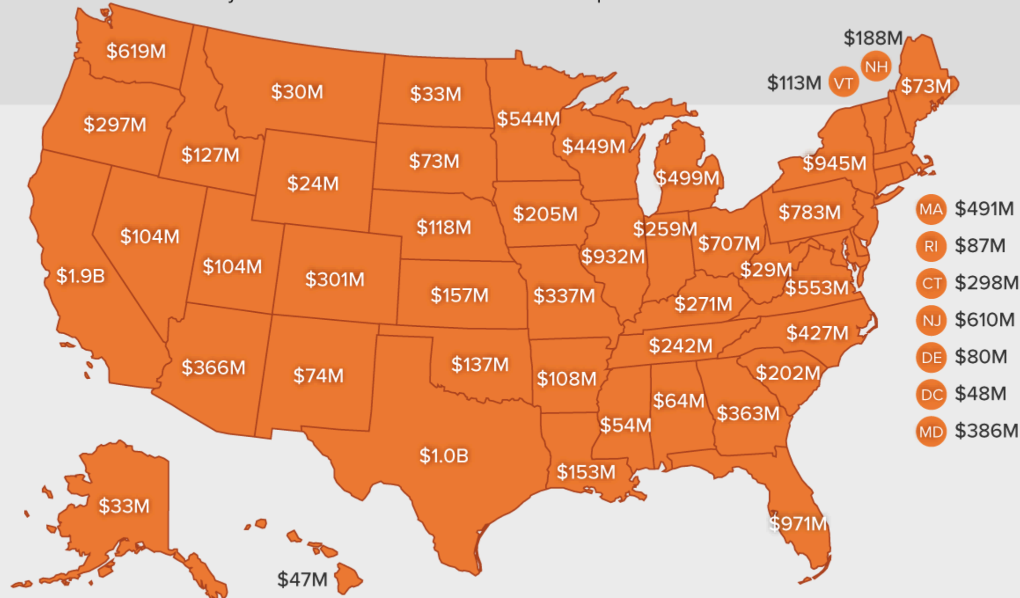
Summary: Every year, retirement savers lose $17 billion acting on advice from financial advisers who have conflicts of interest.

When financial advisers are paid through fees and commissions that directly depend on which investment products their clients choose, the advice they provide is "conflicted"—what is best for the adviser may not be best for the client. This creates incentives for advisers to steer their clients into investments that provide larger payments to the adviser but are not necessarily the best choice for the investor. Every year, retirement savers lose $17 billion acting on advice from financial advisers who have conflicts of interest.

The map below shows how much retirement savers lose annually in each state as a result of receiving conflicted advice. Annual losses from conflicted investment advice range from $24.2 million in Wyoming to $205.3 million in Iowa to just over a billion in Texas and to nearly $1.9 billion in California.

Financial advisers with conflicts of interest cost retirement savers this much in every state every year

The conflict of interest or **"fiduciary" rule** will require financial advisers to act in their clients' best interest—just like doctors and lawyers. **But the Trump administration and Republicans in Congress are trying to weaken or kill the rule**, and a lot is at stake. People saving for retirement lose billions of dollars every year due to conflicted advice from unscrupulous financial advisers.



Source: EPI analysis of Survey of Income and Program Participation (SIPP) data; *The Effects of Conflicted Investment Advice on Retirement Savings* (White House Council of Economic Advisers, February 2015)

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Note: The map shows the annual costs to retirement savers of the underperformance of IRA assets that are invested in products for which savers received "conflicted" advice (advice provided by financial advisers whose earnings depend on the actions taken by the client). If it were fully implemented, the conflict of interest ("fiduciary") rule would require that financial advisers act in the best interests of clients saving for retirement. Underperformance of investment returns in which savers received conflicted advice can be due to a wide range of factors, including high fees, high trading costs, poor market timing, and increased risk exposure without increased returns.

This fleecing of retirement savers should be illegal. Financial advisers, like lawyers and doctors, should be required to act in the best interests of their clients. That's what the "conflict of interest" rule—also known as the "fiduciary" rule—does. Set to go into partial effect June 9, the conflict of interest rule would require financial advisers to act in the best interests of clients saving for retirement.[1]

But this rule is under threat from the Trump administration, which has demonstrated that weakening or rescinding the rule is a core priority. In the second week of his presidency, Donald Trump directed the Department of Labor to prepare an analysis concerning the likely impact of the rule—despite the fact that the department had already completed a roughly six-year, exhaustive vetting process.[2] This vetting process produced a nearly 400-page economic analysis on the likely impact of the final rule. The analysis was published one year before the rule would go into effect, and it incorporated feedback from

four days of hearings, more than 100 stakeholder meetings, thousands of public comments, and a detailed review of the academic literature. The analysis found that "adviser conflicts are inflicting large, avoidable losses on retirement investors, that appropriate, strong reforms are necessary, and that compliance with this final rule and exemptions can be expected to deliver large net gains to retirement investors."[3]

To have time to conduct the additional examination, the Department of Labor delayed the implementation of the rule by 60 days, from April 10 to June 9. This delay hurt retirement savers, and not just during the period of the delay. In the proposal to delay the conflict of interest rule, the department noted that the losses that retirement savers would incur from being steered toward higher-cost investment products during the delay "would not be recovered, and would continue to compound, as the accumulated losses would have reduced the asset base that is available later for reinvestment or spending."[4] The 60-day delay will cost retirement savers $3.7 billion over the next 30 years—and this estimate is an undercount because it considers only individual retirement accounts, not other investment vehicles subject to potential conflicted advice, such as 401(k)s.[5] The table below shows how much retirement savers in each state will lose as a result of the 60-day delay.

Alexander Acosta, who became Secretary of Labor on April 28, originally said that he was hoping to further "freeze the rule," but has since said that he couldn't find a legal way to do so, stating that while the department "should seek public comment on how to revise this rule," department officials "have found no principled legal basis to change the June 9 date while we seek public input."[6] The fact that there will be no added delay in the near term is very good news. Further delay of the rule would have been a huge win for the financial industry and a huge loss for retirement savers all across the country, with every additional week of delay costing retirement savers $431 million over the next 30 years.[7]

However, while the rule's fiduciary standard will take effect on June 9, key compliance provisions built into the rule's exemptions have been further delayed to January 1, 2018. Moreover, the department has stated that it will not enforce the rule between June 9 and January 1.[8] This means the loopholes that allow financial advisers to take advantage of savers are not fully closed, and retirement savers will continue to be harmed.

Further, it is far from certain that the rule will in fact become fully applicable on January 1. The department has made it clear that—as requested by the financial industry—it is considering proposing additional changes to the rule and delaying it beyond January 1.[9] Thus, we can expect further attempts to weaken and delay the rule in coming months. These actions would further harm retirement savers, who need a fully applicable and vigorously enforced rule to protect their savings from the large losses caused by conflicted advice. As the administration takes its next steps, the cost estimates provided in the map and the table show what is at stake for retirement savers.

Endnotes

1. Employee Benefits Security Administration, Department of Labor, "Definition of the Term

Table 1

The high cost of conflicted advice to retirement savers

	Annual cost to retirement savers from "conflicted" financial advice (in millions)	What the 60-day delay to the "fiduciary" rule already will cost savers over the next 30 years (in millions)
U.S.	$17,000.0	$3,700.0
Alabama	64.3	14.0
Alaska	32.7	7.1
Arizona	366.2	79.7
Arkansas	107.8	23.5
California	1,874.4	408.0
Colorado	301.1	65.5
Connecticut	298.5	65.0
Delaware	79.8	17.4
DC	48.1	10.5
Florida	971.0	211.3
Georgia	363.0	79.0
Hawaii	47.3	10.3
Idaho	126.8	27.6
Illinois	931.9	202.8
Indiana	258.7	56.3
Iowa	205.3	44.7
Kansas	157.5	34.3
Kentucky	270.6	58.9
Louisiana	153.4	33.4
Maine	73.3	16.0
Maryland	385.7	83.9
Massachusetts	491.1	106.9
Michigan	499.2	108.6
Minnesota	544.2	118.4
Mississippi	54.0	11.8
Missouri	337.4	73.4
Montana	29.7	6.5
Nebraska	118.3	25.8
Nevada	104.3	22.7
New Hampshire	187.9	40.9

Table 1 (cont.)

	Annual cost to retirement savers from "conflicted" financial advice (in millions)	What the 60-day delay to the "fiduciary" rule already will cost savers over the next 30 years (in millions)
New Jersey	610.0	132.8
New Mexico	74.2	16.1
New York	945.2	205.7
North Carolina	427.0	92.9
North Dakota	33.0	7.2
Ohio	707.1	153.9
Oklahoma	137.1	29.8
Oregon	297.3	64.7
Pennsylvania	782.8	170.4
Rhode Island	86.7	18.9
South Carolina	202.4	44.0
South Dakota	73.2	15.9
Tennessee	242.0	52.7
Texas	1,007.0	219.2
Utah	104.5	22.7
Vermont	112.8	24.5
Virginia	553.3	120.4
Washington	618.6	134.6
West Virginia	29.1	6.3
Wisconsin	449.2	97.8
Wyoming	24.2	5.3

Note: The data in column one quantify the annual costs to retirement savers of the underperformance of IRA assets that are invested in products for which savers received conflicted advice. Conflicted advice is advice provided by financial advisers whose earnings depend on the actions taken by the client. Underperformance of investment returns in which savers received conflicted advice can be due to a wide range of factors, including high fees, high trading costs, poor market timing, and increased risk exposure without increased returns. The data in column two quantify the losses retirement savers will incur over the next 30 years because the administration imposed a 60-day delay of the conflict of interest ("fiduciary") rule, which requires that financial advisers act in the best interests of clients saving for retirement. [See extended notes.]

Sources: The $17 billion figure is from *The Effects of Conflicted Investment Advice on Retirement Savings* (White House Council of Economic Advisers, February 2015); the $3.7 billion figure is from *Addendum: Methodology for Estimating the Losses to Retirement Investors of Fiduciary Rule Delay* (Economic Policy Institute, March 17, 2017); state breakdowns are based on Survey of Income and Program Participation (SIPP) data from the U.S. Census Bureau, 2008.

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'Fiduciary'; Conflict of Interest Rule-Retirement Investment Advice" [final rule], *Federal Register* vol. 81, no. 68, 20945–21002 (April 8, 2016).

2. The White House, "Presidential Memorandum on Fiduciary Duty Rule," February 3, 2017.

3. Department of Labor, *Regulating Advice Markets: Definition of the Term 'Fiduciary' Conflicts of Interest–Retirement Investment Advice; Regulatory Impact Analysis for Final Rule and Exemptions*, April 2016.

4. Employee Benefits Security Administration, Department of Labor, "Definition of the Term 'Fiduciary'; Conflict of Interest Rule-Retirement Investment Advice; Best Interest Contract Exemption (Prohibited Transaction Exemption 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016-02); Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, 84-24 and 86-128" [proposed rule], *Federal Register* vol. 82, no. 40, 12319–12326 (March 2, 2017).

5. Heidi Shierholz, "EPI Comment on the Proposal to Extend the Applicability Date to the Fiduciary Rule," letter to the U.S. Department of Labor Employee Benefits Security Administration, March 17, 2017.

6. National Association of Plan Advisors, "Acosta Looking to Freeze DOL Fiduciary Regulation," NAPA Net, May 10, 2017; Alexander Acosta, "Deregulators Must Follow the Law, So Regulators Will Too: As the Labor Department Acts to Revise the Fiduciary Rule and Others, the Process Requires Patience" [opinion], *Wall Street Journal*, May 22, 2017.

7. Heidi Shierholz, "EPI Comment on the Proposal to Extend the Applicability Date to the Fiduciary Rule," letter to the U.S. Department of Labor Employee Benefits Security Administration, March 17, 2017.

8. Employee Benefits Security Administration, Department of Labor, *Field Assistance Bulletin No. 2017-02*, May 22, 2017.

9. Employee Benefits Security Administration, Department of Labor, "Conflict of Interest FAQs (Transition Period)," May 2017.