ECONOMIC ANALYSIS OF THE DOL'S PROPOSED RETIREMENT SECURITY RULE ("FIDUCIARY RULE")

A REPORT FOR THE FINANCIAL SERVICES INSTITUTE

JANUARY 2024

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JANUARY 2024

Oxford Economics
5 Hanover Sq, 8th Floor
New York, NY 10004
Tel: +1 646-786-1879

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EXECUTIVE SUMMARY

The Department of Labor (DOL) is proposing a new regulatory definition of an investment advice fiduciary for purposes of Title 1 and Title II of the Employee Retirement Income Security Act (ERISA). At the same time, the DOL also set out accompanying amendments to various prohibited transaction exemptions. For simplicity, we refer to this collectively as the "proposed 2023 Fiduciary Rule". The Financial Services Institute (FSI) commissioned Oxford Economics to comment on the economic effects the DOL's proposed regulation would have if implemented, both broadly and on independent financial services firms in particular.

Background

A key feature of the proposed rule is replacing the regular basis requirement of the 1975 rules, which required an ongoing relationship between the financial professional and the specific retirement investor, with a requirement only that the financial professional make recommendations to *any* investors on a regular basis. This requirement would be met by almost all financial professionals who offer investment recommendations; indeed, the regulation would effectively apply a fiduciary standard to all investment recommendations made, as well as investment education and guidance offered, in the context of a retirement account. In addition, an advisor who either directly or indirectly has discretionary authority with respect to purchasing or selling securities or other investment property for the retirement investor or who acknowledges that they are acting as a fiduciary when making investment recommendations is also an investment advice fiduciary. The proposed rule is expansive in scope. If adopted, a large number of securities transactions would be prohibited transactions and require an exemption for the advisor to receive compensation for their work. Prohibited Transaction Exemption 2020-02 will cover millions of additional transactions and subject them to additional costly conditions and requirements.

The cost of the rule far exceeds the DOL's estimates

In partnership with the Financial Services Institute, Oxford Economics surveyed independent financial services firms about the potential cost implications of the proposed 2023 Fiduciary Rule. Fifteen FSI member firms responded to the survey, representing over 26,000 financial advisors with a total revenue of $14.5 billion. All respondents answered questions about the following aspects of the proposed 2023 Fiduciary Rule:

- Upfront Costs: the costs the firms would have to incur one time in preparing for the rule.
- Ongoing Costs: the costs the firms would incur on an annual basis, including in the first year.

Based on the survey responses, we estimate that the upfront cost for the proposed 2023 Fiduciary rule will be approximately $238 million, over six times the DOL's estimate of upfront costs ($37 million). Our estimate of the ongoing annual cost of the rules, $2.5 billion, is almost 11 times the DOL's estimate ($216 million.

The DOL's claimed benefits are unquantifed and based on dated research

The DOL does not make any quantitative estimates of the benefits the proposed rule. Rather, the benefits in the Notice of Proposed Rulemaking are presented qualitatively, and are grounded in literature which, without exception, uses data which do not control for the impacts of Regulation Best Interest and PTE 2020-02. We set out problems with, and qualifications of, the DOL's evidence of potential benefits and conclude that at best these are speculative, with magnitudes that are unclear.

Impacts on investors

The effects of the rules on investors are expected to be concentrated on the smaller, less relatively sophisticated retirement investors in commission-based (rather than fee-based) accounts who rely on incidental advice and recommendations, education, and guidance from their registered representatives. These small investors are likely to lose access to needed support and recommendations, education, and guidance, while those in somewhat larger accounts may only be shifted into fee-based services when the investor may have been better served by a commission-based account. Investors who remain in commission-based accounts with investment recommendations are likely to see increased costs and reduced investment product choices.

1. INTRODUCTION

On November 3, 2023, the Department of Labor (DOL) published a proposed regulation to change the rules defining an investment advice fiduciary.[1] At the same time, the DOL also set out accompanying amendments to various prohibited transaction exemptions including PTE 2020-02, PTE 84-24, and PTEs 75-1, 77-4, 80-83, 83-1, and 86-128.[2] For simplicity, we refer to this collectively as the "Proposed 2023 Fiduciary Rule". This report focuses on the broad contours of the DOL's economic analysis as reflected in the regulatory impact analysis, as well as the implications of the proposed rule for independent financial services firms, and thus mostly concerns the definition of a fiduciary, as well as the proposed amendments to PTE 2020-02.

The Financial Services Institute (FSI)[3] commissioned Oxford Economics to comment on the economic effects the DOL's proposed regulation would have if implemented, both broadly and on independent financial services firms in particular. This work follows similar analysis (published in 2015[4] and 2017[5]) we conducted for a previous fiduciary rule proposal.

FSI represents independent financial services firms with affiliated financial advisors engaged in the sale of financial products such as mutual funds, ETFs, and variable life insurance and annuity products. We have detailed previously how affiliated financial advisors at FSI member firms "tend to operate as storefront businesses on the main streets of small to mid-sized cities in the United States, seeking to provide affordable, accessible, unbiased advice".[6] FSI members frequently serve rural and underserved communities. The footprint of FSI member firms is significant. As of December 2020,[7] we enumerated that FSI members contribute around $36 billion in US GDP and support 408,000 jobs. FSI member jobs support 1.2 million additional jobs through the broader economy. Notably, FSI's members have an especially significant impact on the economies of small and mid-sized states.[8] Disruptions to the business models of these independent financial services firms may impact those states disproportionately.

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[1] "Retirement Security Rule: Definition of an Investment Advice Fiduciary," (November 3, 2023), Federal Register / Vol. 88, No. 212 29 CFR Part 2510 (hereafter the "NPRM").

[2] *See* DOL, "Proposed Retirement Security Rule: Definition of an Investment Advice Fiduciary," EBSA available at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/erisa/retirement-security

[3] The Financial Services Institute (FSI) is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms.

[4] Oxford Economics, April 2015, "The economic consequences of the US Department of Labor's proposed new fiduciary standard," available at https://www.oxfordeconomics.com/resource/the-economic-consequences-of-the-us-department-of-labor-s-proposed-new-fiduciary-standard/

[5] Oxford Economics , April 2017, "How the Fiduciary Rule Increases Costs and Decreases Choice"

[6] Oxford Economics, 2016, "The Economic Impact of FSI's Members", available at https://www.oxfordeconomics.com/resource/the-economic-impact-of-fsi-s-members/

[7] Oxford Economics, 2020, "The Economic Impact of FSI Members", available at https://financialservices.org/economicimpact/

[8] *Ibid*. page 6

For this study, Oxford Economics has reviewed the DOL's Notice of Proposed Rulemaking, and the description of benefits and costs as set out in the Regulatory Impact Analysis.[9] In order to assess the costs of implementing changes required by the rule, Oxford Economics, in partnership with FSI, conducted a survey of independent financial services firms on the possible upfront and recurring costs associated with the rule. The survey also asked firms about possible implications for small account holders, and fees associated with providing brokerage and advisory services to investors.

This report sets out the findings of this research and subsequent discussion of the rule's likely economic implications as described below:

- Chapter 2 provides a brief regulatory history of the evolution of the rule, and discusses how the DOL proposes altering the definition of an investment advice fiduciary.
- Chapter 3 explores the DOL's cost estimates of the proposed regulation, drawing on a survey of independent financial services firms conducted subsequent to the release of the proposed regulation.
- Chapter 4 discusses the evidence the DOL offers of potential benefits of the rule.
- Chapter 5 considers the impacts of the proposed regulation on investors, especially small account holders.
- Chapter 6 concludes.

[9] NPRM, Section F.

2. BACKGROUND

The Employee Retirement Security Act (**ERISA**), which was passed by Congress in 1974, imposes a **fiduciary standard** of care on financial professionals who are compensated for providing **investment advice** to an employer-sponsored retirement plan, such as a defined-benefit plan or a 401(k). Professionals who advise individually-directed tax-favored accounts such as an Individual Retirement Account (IRA), also can be fiduciaries, but ERISA's stringent fiduciary duties do not apply to fiduciaries providing investment advice to IRAs.

Currently, DOL regulations from 1975 impose a five-part test to determine what constitutes investment advice. According to **the 1975 rule**, "to be held to ERISA's fiduciary standard… an individual must:

- make recommendations on investing in, purchasing, or selling securities or other property, or give advice as to the value
- on a regular basis
- pursuant to a mutual understanding that the advice
- would serve as a primary basis for investment decisions, and
- would be individualized to the particular needs of the plan…"[10]

The second of these five parts ("regular basis") has been a focal point of the DOL's multiple rulemakings on this subject since 2010. The 1975 rule recognizes a distinction between one-time investment recommendations made by a broker and on-going advice offered by an investment adviser, which the proposed rule would eliminate.

In the Notice of Proposed Rulemaking (NPRM) for the **2023 proposed rule**, the DOL posits three different "contexts" in which an individual would be an investment-advice fiduciary. In one of the contexts, an individual would be a fiduciary if:

- they make an investment recommendation to a retirement investor;
- for a fee or other compensation; and
- they regularly make investment recommendations to investors on a regular basis as part of their business.[11]

The proposed rule would thus replace the regular basis requirement of the 1975 rules, which required an ongoing relationship between the financial professional and the specific retirement investor, with a requirement only that the financial professional make recommendations to *any* investors on a regular

[10] Department of Labor. Regulatory Impact Analysis. April 2016. p. 15, available at https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2/ria.pdf

[11] 29 C.F.R. § 2510.3-21(c)(1)(ii)(B).

basis. This test would be met by almost all financial professionals who offer investment recommendations, meaning that the regulation would effectively apply a fiduciary standard to all investment recommendations made in the context of a retirement account. In addition, an advisor who either directly or indirectly has discretionary authority with respect to purchasing or selling securities or other investment property for the retirement investor or who acknowledges that they are acting as a fiduciary when making investment recommendations is also deemed an investment advice fiduciary. These other two contexts are extremely broad and also would independently make a great many financial professionals into fiduciaries overnight.

Under ERISA, a fiduciary who advises a transaction for a retirement account in which they have a personal conflict of interest—that is, where they stand to be compensated if their client follows their advice—must obtain a **Prohibited Transaction Exemption (PTE)**, which imposes conditions on the financial professional such as additional disclosure requirements, or restrictions on compensation. Under the proposed rule, most otherwise prohibited transactions would be undertaken pursuant to PTE 2020-02, which is discussed in section 2.1 below.

2.1 THE DOL'S PRIOR RULEMAKINGS

Including the current proposed regulation, the DOL has undertaken four rulemakings related to fiduciary status under ERISA over the past 14 years. The first proposed replacement to the 1975 rule was announced in 2010, but was withdrawn in 2011 following significant negative feedback. Four years later, in 2015, the DOL issued a new set of proposed regulations about fiduciary status, the final version of which was released in 2016. Oxford Economics commented on these rules at the time.[12] Similar to the current proposed rule, the 2016 Fiduciary Rule eliminated the on-going basis requirement of the 1975 rules, forcing most transactions in commission-based retirement accounts to proceed through a PTE. In the 2016 rule, this was the Best Interest Contract (BIC) PTE, which required brokers to sign contracts conforming to the DOL's specific requirements with their clients, among other things.

The 2016 Fiduciary Rule came into formal effect on June 9, 2017; however, the DOL delayed key provisions and enforcement of the new rule until 2018,[13] and then on November 29, 2017, issued a further 18-month delay of key provisions of the rule.[14] On March 15, 2018, in *U.S. Chamber of Commerce v. DOL*, a case in

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[12] Oxford Economics (2015). "The economic consequences of the US Department of Labor's proposed new fiduciary rule" https://www.oxfordeconomics.com/resource/the-economic-consequences-of-the-us-department-of-labor-s-proposed-new-fiduciary-standard/. Oxford Economics (2017). "The fiduciary rule increases costs and decreases choice." https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB79/01398.pdf.

[13] Shierholz, H., "Starting Friday, financial advisers must act in your best interest … maybe", June 8, 2017, available at https://thehill.com/blogs/pundits-blog/finance/337005-starting-friday-financial-advisers-must-act-in-your-best/

[14] 18-Month Extension of Transition Period and Delay of Applicability Dates; Best Interest Contract Exemption (PTE 2016-01), 82 FR 56545 (Nov. 29, 2017) (29 CFR 2550).

which FSI was a co-plaintiff, a three-judge panel of the US Fifth Circuit vacated the 2016 Fiduciary Rule in its entirety.[15] The Trump administration chose not to appeal the ruling, terminating the 2016 rule.

With the 1975 rule back in effect, in 2020 the DOL issued a new PTE, PTE 2020-02. The scope of relief provided under PTE 2020-02 is similar to that of the BIC PTE, and imposes a number of conditions (outlined below) including that the investment advice fiduciary abide by conduct standards that align with those outlined in the federal securities laws and regulations promulgated thereunder, such as Regulation Best Interest (Reg BI).[16]

When issued in 2020, the DOL intended PTE 2020-02 to apply also to fiduciary recommendations made in the context of **rollovers**; for example, a rollover from an individual's employer-sponsored 401(K) retirement account to their IRA. Because rollovers are one-time events, such recommendations generally would not satisfy the on-going basis requirement of the 1975 rules, which remained unchanged, and thus would not trigger fiduciary status. Nevertheless, guidance issued by the Biden Administration in 2021 suggested that rollover recommendations could be considered fiduciary advice if the financial professional expects to give ongoing advice after the rollover. This interpretation was struck down in *Am. Sec. Ass'n v. DOL*[17] on February 13, 2023; although PTE 2020-02 itself remains in effect.

PTE 2020-02 imposes six conditions to render permissible an otherwise prohibited transaction. Specifically, the financial professional must:

- acknowledge that they are a fiduciary under ERISA;
- disclose, in writing, to the client the scope of the relationship and any material conflicts of interest;
- comply with DOL's Impartial Conduct Standards requiring advisors to provide prudent investment advice, charge only reasonable compensation, and avoid misleading statements;
- provide written disclosures to clients of why the recommendation to roll over assets is in their best interests;
- conduct an annual review of the firm's compliance with PTE 2020-02 (and document the results in a written report to a "Senior Executive Officer" of the financial institution); and
- adopt and implement policies and procedures to comply with the DOL's Impartial Conduct Standards, mitigate conflicts of interest, and document the reasons for recommending rollovers of retirement assets.[18]

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[15] *Chamber of Commerce v. U.S. Department of Labor*, 885 F.3d 360(5th Cir. 2018), slip op. available at https://www.ca5.uscourts.gov/opinions/pub/17/17-10238-cv0.pdf.

[16] NPRM, p. 75896.

[17] *Am. Sec. Ass'n v. U.S. Department of Labor*, M.D. Fla., No. 8:22-cv-00330, (February 13, 2023). See https://casetext.com/case/am-sec-assn-v-united-states-dept-of-labor.

[18] See DOL, April 2021, "New Fiduciary Advice Exemption: PTE 2020-02 Improving Investment Advice for Workers & Retirees Frequently Asked Questions," available at https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/new-fiduciary-advice-exemption. There are also many summaries, such as Kitces, M., "Complying With PTE 2020-02 Under DoL's New IRA

2.2 OTHER REGULATORY DEVELOPMENTS

Since the 2016 Fiduciary Rule was vacated, various other regulators have also imposed heightened standard of care obligations on financial advisors and financial services firms. These developments may have addressed many, if not all, of the asserted motivations for the 2016 rule.

Reg BI was adopted by the SEC in June 2019 and went into effect on June 30, 2020. The intent and many of the requirements of Reg BI appear fundamentally similar to those of the 2016 Fiduciary Rule and the proposed 2023 Fiduciary Rule. Each imposes a best interest standard of care on financial professionals, requiring them to put their clients' interests ahead of their own. However, each rule has its own specific compliance obligations.

A major difference between Reg BI and the Fiduciary Rules relates to their coverage.

- Reg BI applies to securities regulated under federal securities laws, whether as part of a retirement or non-retirement account. It does not apply to non-securities investments, including fixed index annuities as well as certain other investments like Real Estate Investment Trusts (REITs), which are covered under different regulations.
- The proposed Fiduciary Rule applies to all investment types that can be held as part of a retirement account, like an IRA, including securities and non-securities.

Significant portions of the NPRM consider the case of the sale of fixed index annuities. The National Association of Insurance Commissioners (NAIC) revised its model regulation in 2020 to a consumer best interest standard when making an annuity recommendation.[19] This had been implemented in 43 jurisdictions by August 2023.[20]

2.3 THE PROPOSED 2023 FIDUCIARY RULE

The DOL frames its 2023 Proposed Fiduciary Rule as "much more narrowly tailored than the 2016 Final Rule,"[21] focused on "certain specified contexts", and focused on filling the regulatory gaps where "legitimate investor understandings" are undermined.[22] Some of the "gaps" identified in the NPRM, which DOL asserts constitute "the most significant benefits of the proposal"[23] include:

Rollover Requirements," *Kitces.com*, June 15, 2022, available at https://www.kitces.com/blog/ira-401k-rollovers-pte-2020-02-erisa-fiduciary-dol-prohibited-transaction-exemption/.

[19] NPRM, p. 75982

[20] NPRM, p. 75983

[21] NPRM, p. 75901

[22] NPRM, p. 75899.

[23] NPRM, p. 75913

1. Advice from broker-dealers to plans and plan fiduciaries that is outside the scope of Reg BI.[24]
2. Plans and investments that are outside the scope of Federal Securities Laws, and hence outside the scope of Reg BI, including "real estate, fixed indexed annuities, certificates of deposit, and other bank products".[25]
3. The context of "recommendations to roll over assets from workplace retirement plans to IRAs."[26]

While the NPRM is framed as narrowly tailored and focused on these gaps, we understand that as drafted the scope is, in fact, similar to that of 2016. Financial services professionals would broadly be considered as fiduciaries in the context of performing "individualized investment interactions with retirement investors," as well as the other two contexts included in the NPRM.[27] The primary form of relief for providing conflicted advice is an amended PTE 2020-02, which includes expanded and new disclosures.

[24] NPRM, p. 75900
[25] NPRM, p. 75900
[26] NPRM, p. 75894
[27] Eversheds Sutherland, "A long and winding road Department of Labor's Fiduciary Rule 4.0 proposal", November 2023

3. COST ESTIMATES

If the Proposed 2023 Fiduciary Rule were to come into effect, it would require affected entities to take costly measures to come into compliance and remain in compliance with the regulation. In this chapter, we consider the costs of the proposed regulation on affected financial entities. It is important to note that these costs will largely be passed on to retirement investors serviced by these firms. The effects of the proposed regulation on investors are discussed in chapter 5.

In section 3.1 below, we review the DOL's own cost estimates for the proposed regulation. In section 3.2, we present our own original cost estimates of the proposed regulation based on a survey of Independent Broker Dealers who are FSI member companies. In section 3.3, we compare our results to the DOL's estimates.

3.1 DOL'S COST ESTIMATE

The DOL estimates that the proposed 2023 Fiduciary Rule would impose a total compliance cost across all affected entities of $253 million in the first year and $216 million per year in subsequent years.[28] (Note that this implies one-time start-up costs of only $37 million, i.e., the difference between the first-year and subsequent year costs.) As shown in Fig. 1, approximately 91% of these costs are associated with compliance with PTE 2020-02, and the bulk of these costs, especially after the rule review in the first year, relate to costs for rollover disclosures.[29] The DOL neglects to account for the additional time financial advisors and support staff will spend to comply with the requirements of the rule and amended PTE 2020-02.

[28] NPRM, p. 75948

[29] These cost categories are described on pages 75949-75954 and summarized briefly here. Rule Review: If the proposed 2023 proposed fiduciary rule were to go into effect, the firms would have to spend some time understanding the rule. General Disclosure: This includes costs associated with modifying the current disclosures and writing new disclosures. Rollover Disclosure: Before engaging in a rollover or making a recommendation to a plan participant, the investment professional must "consider and document their conclusions as to whether a rollover is in a retirement investor's best interest and provide that documentation to the retirement investor." (NPRM p. 75942) Policies and Procedures: This includes the time required to establish, maintain, and enforce written policies and procedures to remain compliant with the rule. Retrospective Review: Financial institutions are required to conduct a retrospective review at least annually to remain compliant with PTE 2020-02.

Fig. 1. NPRM's estimated costs of the proposed regulation[30]

Cost category	First-year costs		Subsequent year costs	
	$ millions	%	$ millions	%
PTE 2020-02	$232	91%	$197	91%
Rule review	$28	11%	$0	0%
General disclosures	$6	2%	$1	0%
Rollover disclosures	$194	77%	$194	90%
Policies and procedures	$3	1%	$2	1%
Retrospective review	$1	0%	$1	0%
Other PTEs	$22	9%	$19	9%
Total costs	$253	100%	$216	100%

Source: NPRM, Oxford Economics

Based on these annual estimates, the DOL calculates that the total 10-year cost associated with the proposed regulation would be $1,880 million, or an annualized cost of $220.4 million using a 3% discount rate.[31] This cost estimate is dramatically lower than the DOL's cost estimates for the overturned 2016 Fiduciary Rule. According to the Regulatory Impact Analysis (RIA) for the 2016 rule, "[u]sing the 10-year, three percent discounted estimates[,] DOL's cost estimates… range from $10.0 to $31.5 billion".[32] Thus, **the DOL estimates that the proposed 2023 Fiduciary Rule will result in costs 81% to 94% lower than its own cost estimates for the vacated 2016 Fiduciary Rule.**

The DOL asserts that the "quantified costs [of the proposed 2023 Fiduciary Rule] are significantly lower than the costs of 2016 RIA due to the smaller scope of the proposal relative to the 2016 Final Rule as well as compliance structures adopted by the industry to reduce conflicted advice in response to state Regulations, Reg BI, PTE 2020-02, and the DOL's 2016 Rulemaking".[33] However, the DOL undertakes no quantitative analysis of the cost differences between the 2016 and 2023 Fiduciary Rules. For example, Fig. 2 below presents the start-up cost categories that the DOL used in the 2016 RIA, and the distribution of costs to broker-dealers (BDs) across these categories.

[30] Numbers may not add up due to rounding.
[31] NPRM, p. 75948, footnote 462. We have opted for the 3% discount rate to facilitate comparison with the 2016 Fiduciary Rule. The 7% rate value, which is the DOL's preferred estimate, is $1,553 million over 10 years, or an annualized $221.1 million.
[32] DOL, April 2016, "Regulatory Impact Analysis for Final Rule and Exemptions," available at https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2/ria.pdf, p. 248. Hereafter referred to as the "2016 RIA."
[33] NRPM, p. 75948

Fig. 2. DOL's start-up cost categories and BD cost shares for 2016 Fiduciary Rule[34]

2016 start-up cost category	Cost shares for Broker-Dealers
Disclosure requirements	12%
Data collection	5%
Record keeping	9%
Implementing BICE contracts	33%
Training and licensing	32%
Supervisory, compliance, and legal oversight	8%

Source: 2016 RIA, Oxford Economics

Because the cost categories in the DOL's analysis of the proposed 2023 Fiduciary Rule (i.e., for start-up costs, the rows in Fig. 1) are incommensurate with the cost categories in the DOL's analysis of the vacated 2016 Fiduciary Rule (i.e., for start-up costs, the rows in Fig. 2), it is not possible to break out the DOL's overall 81-94% cost reductions into specific reductions by cost category. While costs for implementing BIC Exemption contracts, representing a third of start-up costs, may no longer be relevant to the proposed rule; the remaining cost categories would be.

3.2 COST ESTIMATES BASED ON 2023 FSI MEMBER SURVEY

In partnership with the FSI, Oxford Economics surveyed independent financial services firms about the potential cost implications of the 2023 Fiduciary rule. Fifteen FSI member firms responded to the survey. Cost estimates for individual firms were adjusted to a per-Financial Advisor (FA) basis, and the median cost value in each category was selected and scaled to the national total of FAs based on FINRA data. Because the cost estimates presented here use the hourly compensation assumptions from the NPRM, which are extremely conservative, FSI's cost estimates presented here are inherently conservative. Additional details about the survey and calculations are presented in the appendix.

All respondents answered questions about the following aspects of the Proposed 2023 Fiduciary Rule:

- Upfront Costs: focused on the costs the firms would have to incur in preparing for the rule.
- Ongoing Costs: focused on the costs the firms would incur on an annual basis going forward.

In addition, where applicable, respondents were also asked to estimate costs they incurred related to the 2016 Fiduciary Rule, Reg BI, and PTE 2020-02 when it was first issued in 2020.

[34] 2016 RIA, p. 232, Oxford Economics calculations based on figure 5-8.

3.2.1 Upfront costs

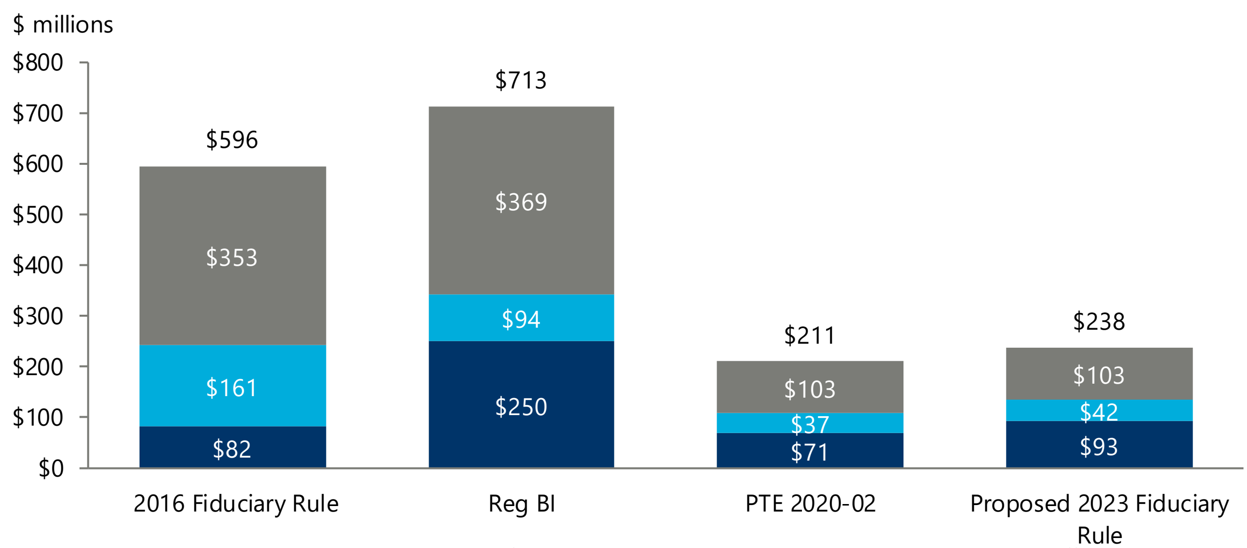
The survey asked FSI member firms to estimate: how much their organization spent or would spend upfront on:

- Upgrading software systems;
- External legal or consulting costs; and
- The amount of extra staff time their organization had "spent/will spend upfront understanding and implementing" the requirements of the rules.

Staff time was valued using salary rates adapted from the NPRM; see the appendix for additional detail.

The survey responses imply financial services firms would spend approximately $238 million on the listed categories of upfront costs if the Proposed 2023 Fiduciary Rule were to go into effect. This includes $103 million on added staff time to understand and implement the rules, $93 million on software costs, and $42 million in legal and consulting fees. These costs are summarized in Fig. 3

Fig. 3. Upfront cost estimates[35]



Source: Oxford Economics

Our survey also asked firms to estimate the amount they spent to comply with previous regulations. The survey results imply that financial services firms expect upfront costs for the proposed 2023 Fiduciary Rule ($238 million) to be similar to those incurred for PTE 2020-02 when it was released in 2020 ($211 million), but only about a third of the cost for the overturned 2016 Fiduciary Rule ($596 million) or Reg BI ($713 million), with each of these estimates being based on responses from our survey. Most of that difference comes from less staff time needed to review and implement the rule, and, relative to Reg BI, lower software costs. This suggests that the DOL is correct to argue that changes in the industry have reduced

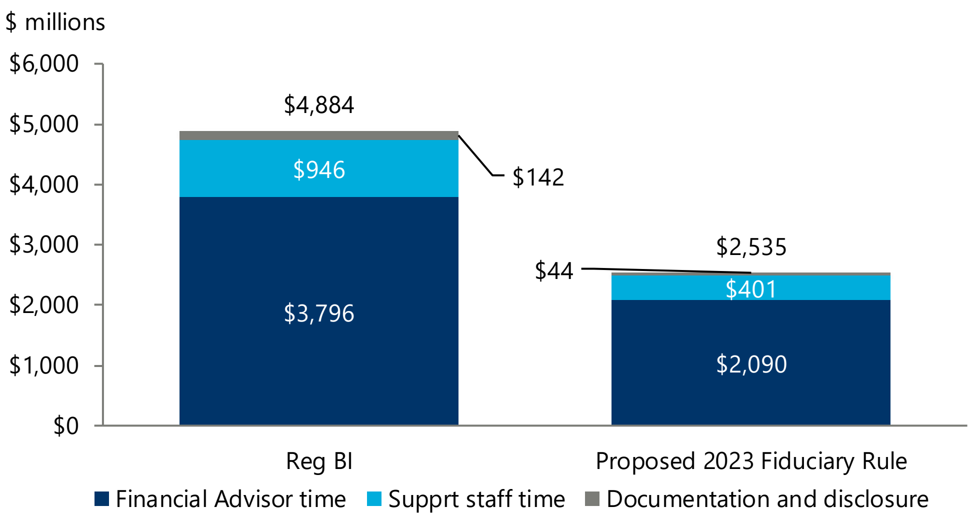
[35] Numbers may not add up due to rounding.

expected costs relative to past rulemakings; however, as discussed in section 3.3, it has overstated this reduction.

3.2.2 Ongoing costs

Respondents were asked a series of questions about their expectations for ongoing annual costs. Overall, the survey responses imply that total ongoing costs for the proposed 2023 Fiduciary Rule will be around $2,535 million annually (Fig. 4). Of this total, only $44 million is expected to go towards printing and mailing costs for documentation and disclosures,[36] with the remainder of the annual ongoing costs representing the additional staff time spent by FAs ($2,090 million) and support staff ($401 million). Overall, respondents expect ongoing costs for the proposed 2023 Fiduciary Rule ($2,535 million) to be about half as much as ongoing costs related to Reg BI ($4,884 million).

Fig. 4. Ongoing costs



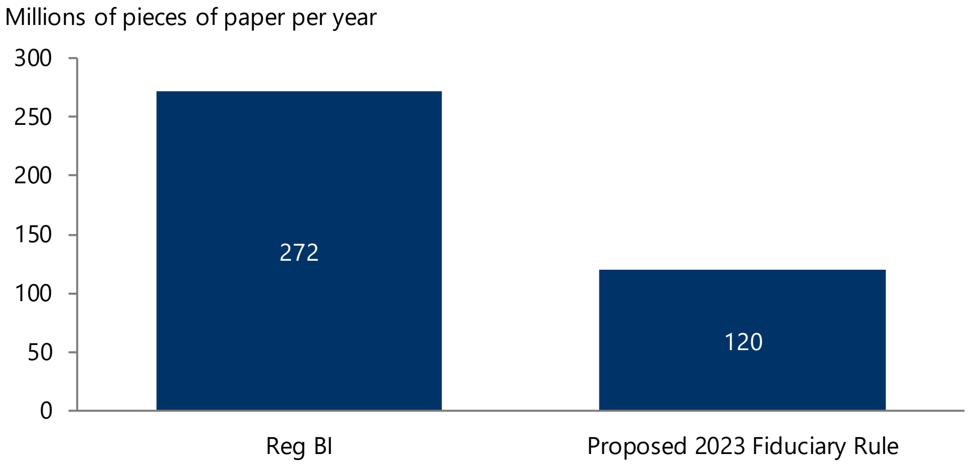
Source: Oxford Economics

The calculations behind these estimates are presented in the appendix. Overall, our survey respondents expect both FAs and their support staff to spend approximately 15 additional minutes per investor interaction, both in the interactions themselves, and reviewing and documenting compliance with the proposed regulation. While there is uncertainty in these estimates, it is worth noting that the DOL does not formally model this staff time cost, which we find to be by far the largest cost of the rules to financial institutions, except where it directly relates to preparing disclosure forms.

[36] Respondents were asked to include only direct printing and mailing costs in the documentation and disclosure category, and to count staff time spent preparing these in the staff time questions. Compare to the DOL's estimate of $194 million in annual costs on rollover and general disclosures (see Fig. 1), which includes staff time.

In addition to the ongoing cost questions, the survey asked FSI member firms to estimate the number of pieces of papers they expected to print annually related to disclosures that cannot be delivered electronically. Using similar calculations to those for the cost questions, which are described in the appendix, we estimate that all BD firms would print approximately 120 million pieces of paper annually for the proposed rule, approximately half what they print for Reg BI (272 million).[37]

Fig. 5. Pieces of paper printed annually



Source: Oxford Economics

3.3 COST ESTIMATE COMPARISONS

Fig. 6 presents a comparison of the DOL's cost estimates from Fig. 1 with our cost estimates presented in Fig. 3 and Fig. 4 based on the FSI member survey.[38] **Overall, our estimate of one-time upfront costs of $238 million is over six times that of the DOL's estimates of $37 million, and our ongoing annual cost estimate of $2,535 million is almost 11 times that of the DOL's $216 million.**

[37] The survey asked respondents to estimate the number of pieces of paper their organization would print annually for disclosures relating to "the proposed 2023 Fiduciary Rule." Nevertheless, since most of the disclosures under the proposed rule relate to PTE 2020-02, it is possible respondents may have overestimated the number of new pages by including some PTE 2020-02 disclosures that would have been sent in the absence of the proposed rule. In its supporting statement for the paperwork reduction act, the DOL estimates that, under the proposed rule, approximately 72% of PTE 2020-02 disclosures will be newly required, while the remaining 28% would have been required under PTE 2020-02 in the absence of the proposed rule. Applying this ratio to our result would imply 87 million additional pieces of paper printed annually (120 million * 72%). See DOL (Nov. 3, 2023), "Supporting Statement for Paperwork Reduction Act of 1995: Improving Advice for Workers & Retirees Prohibited Transaction Exemption," Information Collection Request Reference No. 202308-1210-003, available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202308-1210-003.

[38] Note that the DOL presents costs on the basis of first-year/subsequent years, while we estimate upfront vs. ongoing costs. First year costs are thus equal to upfront plus ongoing costs, while subsequent year and ongoing costs are equivalent.

Fig. 6. Cost Comparisons

		DOL NPRM ($ millions)	FSI survey results ($ millions)	% difference
Upfront / ongoing	Upfront costs	$37	$238	543%
	Ongoing costs	$216	$2,535	1074%
First-year / subsequent years	First-year costs	$253	$2,773	996%
	Subsequent year costs	$216	$2,535	1074%

Source: NPRM, Oxford Economics

Although our cost estimates are many times higher than those in the NPRM, it is important to note that the scope of our estimates is smaller than that of the DOL's. In particular, we consider the impacts on financial advisors such as BDs[39] who service retirement accounts, and the financial services firms at which they work.

The NPRM identifies the following set of entities that also may incur costs as a result of the rule in addition to broker-dealers:

- retirement plans;
- individual retirement accounts;
- pooled employer plans;
- pooled plan providers;
- discretionary fiduciaries;
- registered investment advisers;
- pure robo-advisers;
- insurance companies;
- captive insurance agents and brokers;
- insurance producers;
- banks;
- mutual fund companies;
- investment company principal underwriters; and
- pension consultants.[40]

The costs of the proposed 2023 Fiduciary Rule are thus likely to be significantly greater than what we have estimated.

[39] Including Registered Investment Advisers who are dual-registered as BDs.
[40] NPRM p. 75930.

4. BENEFITS ESTIMATES

In the NPRM, the DOL does not make any formal quantitative estimates of the benefits from the proposed rule. Rather, the benefits in the NPRM are presented qualitatively, and are grounded in literature which, without exception, uses data which do not control for the impacts of Reg BI.[41]

The DOL identifies four categories of qualitative benefits to retirement investors as a result of the proposed 2023 Fiduciary Rule, which are listed in Fig. 7, and discussed in turn below.

Fig. 7. DOL's claimed unquantified benefits of the proposed rule[42]

• Facilitating more efficient capital allocation
• Increasing uniformity in the regulation of financial advice for retirement investors
• Giving retirement investors increased trust and confidence in their advisers
• Protecting consumers from losses that can result from advisory conflicts of interest, including:
▪ Protections concerning rollover investment advice
▪ Protections concerning annuity investment advice
▪ Protections concerning advice given to plan fiduciaries

Source: DOL NPRM, Oxford Economics

The NPRM says little about facilitating **more efficient allocation of capital**, and makes no attempt to quantify it. The point of its inclusion appears to relate to the NPRM's concerns over differentiating social benefits of the proposed rule from transfers.[43] While the NPRM is correct that purported gains to some investors only represent true social benefits if these higher investment returns are associated with more efficient capital allocation in the economy, the NPRM attempts to quantify neither investor gains nor social benefits, making the point theoretical at best.

The NPRM asserts that increased **regulatory uniformity** would promote "clarity and efficiency," and that it would help prevent "bad actors [from being] drawn to those markets with the least regulated products".[44] These claimed benefits from regulatory uniformity, however, are undermined by the repeated

[41] The DOL explains its decision not to provide any quantitative rationale for the proposed rules during the comment period thus: "The Benefits section provides a qualitative description of the expected gains to investors; however, the available data do not allow the Department to break down those gains into component social welfare 'benefits' and 'transfers.'" (NPRM, p.75930) And: "This [Regulatory Impact Analysis] provides a mainly qualitative discussion of the benefits of this proposal. The Department invites comments and data related to how it might quantify these benefits as part of the RIA of any final rule." (NPRM p. 75938)

[42] NPRM. See table 2, p 75929; and Benefits and Transfers section, p. 75937-75944.

[43] NPRM, (p. 75937-75938): "If some transactions have increased net returns for certain parties and decreased returns of equal magnitude for other parties, that would represent a transfer… For example, non-retirement investors may have previously experienced lower prices and higher returns resulting from timing errors of retirement investors due to conflicted advice. As those conflicts are removed, those transactions may not occur, leading to a transfer from non-retirement investors to retirement investors."

[44] NPRM, p. 75938

qualification that the DOL attaches to its discussion of the point: "for retirement investors." For example, just in the NPRM section on Regulatory Uniformity, the DOL includes the following such qualifications:[45]

- "By harmonizing advice regulations across all markets *that are used by retirement investors*…"
- "requiring only some advisers *advising retirement investors*…"
- "This proposed rule would help create a uniform standard, as it would apply to all *retirement investment advice*…"
- "The proposed rule's broad application to all *retirement investment advice*…"
- "This would reduce the risk *to retirement investors*…"
- "This proposal would generate additional economic benefits and transfers by extending important and effective protections broadly to cover all advice *given to retirement investors*…"
- "the Department identifies three specific areas in which *retirement investors* would benefit…"

Thus, instead of creating a new uniform standard for investment advice, the proposed regulation would create yet another seam between different types of advice, specifically between advice for retirement and non-retirement accounts. Further, the use of the phrase "retirement investors" is problematic, because many investors have both retirement and non-retirement accounts, often managed by the same financial professional. The DOL has not illustrated that the proposed rules would have the intended effect and, on its face, the proposal would add ambiguity and confusion for investors who have been educated on conduct standards, such as Reg BI, over the last three and a half years.

The NPRM asserts several benefits that derive from increased **investor trust**. In a high-trust environment, investors face lower costs in finding and in monitoring an advisor, and may be more likely to seek or follow investment advice in the first place. There is no support to indicate that investor trust will increase based on this proposal. For example, DOL did not conduct focus groups of investors to support this assertion. In addition, these benefits from improved advising, however, must be weighed against concerns of investors losing access to investment advice, education, and guidance and investor choice which we discuss in chapter 5.

The final benefit of the proposed rule asserted in the NPRM is **protecting consumers from losses as a result of advisor conflicts**. It is unclear what the DOL means by conflicts in this section, highlighting its different use under ERISA and securities legal frameworks. Under ERISA, all advice is conflicted if an investment advice fiduciary receives compensation connected to the transaction and DOL only speculates that conflict is the cause of investor losses. Because so much of the proposed rule overlaps with existing regulatory structures, especially the SEC's Reg BI, the DOL focuses on three specific areas where, it believes, the proposed rules would substantively change the current rules: advice to plan fiduciaries;

[45] NPRM, p. 75938. Emphases added.

rollover advice; and variable annuities. The first of these, **advice to plan fiduciaries**, is largely outside the scope of our review.[46]

Concern over **rollover recommendations** has been a major focus of the DOL's ERISA rulemakings. The NPRM asserts: "Frequently, participants are better off leaving their 401(k) account in the retirement plan rather than rolling it over to an IRA, particularly if the 401(k) plan has low fees and high-quality investment options."[47] However, as the NPRM acknowledges, most rollovers are now covered by other regulatory provisions, notably the SEC's Reg BI, which applies whenever funds are rolled over into securities. Moreover, the DOL's counterfactual is incomplete, and does not consider the range of actions people might take regarding their 401(k) (without input from a financial services professional), such as taking early withdrawals, failing to appreciate the tax implications of such a choice. As DOL notes in the rollover context, these decisions cannot be undone in the case of an early 401(k) withdrawal. DOL does not include any analysis of the scope of this occurrence for individuals who do not seek financial advice and the opportunity cost and impact on such individuals' long-term retirement security.

Contrary to DOL's assumption that employees would roll-over their retirement savings into an IRA, Munnell et al. (2006)[48] conclude that people often cash out of their 401(k) plans when they change employment. Specifically, in 2004, around 45% of participants cashed out their retirement savings when they changed employers regardless of the 10% penalty that this action carries. Vanguard reports that 29% of those who terminated their employment in 2021 received a lump-sum cash out at job separation which they did not rollover into another employer-sponsored retirement account or IRA.[49] Investment advice, education, and guidance can help prevent such poor investment choices.

The design of 401(k) accounts can be daunting for many plan participants and those who switch employers can find it difficult to keep up. According to the Bureau of Labor Statistics, in January 2022, median employee tenure was 4.1 years.[50] If retirement savings plans are not consolidated, employees could end up with many accounts throughout their working careers.[51] Monitoring multiple accounts can

[46] Advice to plan fiduciaries refers to Title I ERISA plans, which are employer-sponsored retirement plans like 401(K)s. These plans typically have managers who act as fiduciaries to the companies and employees in them, but who themselves may obtain recommendations from brokers and others, who are not currently fiduciaries. These plan fiduciaries are typically more sophisticated than retail investors. We thus expect the benefits to plan fiduciaries to be minimal.

[47] NPRM, p. 75938

[48] Alicia Munnell, and Anneka Sundén, March 2006 , "401(k) plans are still coming up short," Center for Retirement Research, p. 43, available at https://crr.bc.edu/wp-content/uploads/2006/03/ib_43_508rev.pdf

[49] Vanguard (2022), "How America Saves." Retrieved 13 October 2022, from https://institutional.vanguard.com/content/dam/inst/vanguard-has/insights-pdfs/22_TL_HAS_FullReport_2022.pdf. In addition, a significant percentage of participants make serious mistakes, out of those eligible to participate in the plan, 20% chose not to, while only around 10% of participants contribute the maximum. Finally, over half fail to diversify their investments, many over-invest in company stock, and almost none re-balance their portfolios in response to age or market returns. Munnell and Sundén, *ibid*.

[50] Bureau of Labor Statistics, September 22, 2022, "Employee Turnover in 2022," available at https://www.bls.gov/news.release/pdf/tenure.pdf

[51] A study conducted in 2008 by Boston Research Technologies showed that one third of participants in the study had retirement accounts with previous employers that they were not aware of while, according to the Government Accountability Office, during the

be expensive, time-consuming, and has the potential to result in asset holdings that are not well-diversified. DOL has not included this type of analysis to account for and assess the risks and potential negative economic outcomes of remaining in 401(k) plans.

The final benefits considered in the NPRM relates to the **sales of annuities.** The NPRM asserts: "While variable annuities and some indexed annuities are considered securities subject to SEC and FINRA regulation, the standard of care owed to a customer for other types of annuities [such as fixed annuities] depends on the state regulation." Although the DOL does not formally quantify any benefits from the proposed regulation, it does make a quantitative estimate of gains from annuity sales in the NPRM, perhaps as a draft for benefits estimates it plans to unveil in a final rule. Specifically, the NPRM estimates $3.6 billion in investor gains related to increased returns on annuities. This is premised on a 0.2% higher return on half of the $3.8 trillion outstanding in pension assets in annuities:

$\$3.6\ billion$	=	$3.8\ trillion$	×	50%	×	0.2%
(Investor Gains)	=	*(Total pension in asset annuities)*	*X*	*(Share of assets DOL estimates are not currently subject to fiduciary standard)*	*X*	*(Higher Returns from fiduciary standard)*
		(Source: Federal Reserve Flow of Funds)		(Source: None)		(Source: Bhattacharya et al. 2020)

There are multiple problems with this estimate. First, the $3.8 trillion figure represents the total amount of annuity products held across all retirement accounts, and not the annual flow of new sales. Using the same Federal Reserve data, the annual flow of annuities into pension funds (including IRAs) in 2022 was $108 billion in 2022.[52]

In addition, the Bhattacharya et. al. study that is the source for the 0.2% higher returns estimate looks at variable annuities in the period before the changes brought about by Reg BI or PTE 2020-02, while it is fixed index annuities that the DOL asserts are the source of gains here (as they are not already covered by Reg BI).[53]

Finally, the DOL estimates that these higher returns would apply to half of all annuities. This 50% discount is meant to account for the fact that the sales of only some (fixed) annuities are not already covered by existing federal or state regulations imposing a fiduciary or best interest standard. However, there is no basis for the value of 50%. This discount factor is meant to account both for the fact that variable and some indexed annuities are covered by Reg BI, and that other annuities are covered by model NAIC regulations that have already been adopted by 43 (state and state-like) jurisdictions (see section 2.2).

period from 2004 to 2014, around one out of four Americans left money in their 401(k) when separating from their old employer. See Boston Research Technologies & Retirement Clearinghouse, 2018, "Missing Participant Survey," available at https://info.rch1.com/missing-participant-survey and GAO, November2014, "Greater Protections Needed for Forced Transfers and Inactive Accounts," GAO15-73, https://www.gao.gov/assets/gao-15-73.pdf

[52] Federal Reserve, June 8, 2023, "Z.1 Financial Accounts of the United States," available at https://www.federalreserve.gov/releases/z1/20230608/z1.pdf, table F.227. Compare to the source notes in the NPRM, p. 75940, footnote 386. See also: LIMRA, Preliminary U.S. Annuity Fourth Quarter 2022 Sales Estimates, available at https://www.limra.com/siteassets/newsroom/fact-tank/sales-data/2022/q4/4q-2022-prelim-annuity-sales-estimates-vfinal.pdf

[53] Vivek Bhattacharya, Gaston Illanes, & Manisha Padi, Fiduciary Duty and the Market for Financial Advice, Working Paper 25861 National Bureau of Economic Research (2020), at NPRM p.75940.[53]

Thus, the assumption that 50% of annuity sales are not currently subject to an appropriate standard would seem to be a significant overestimate.

4.1 THE DOL'S OUTDATED BENEFITS ESTIMATES

A fundamental problem with the DOL's qualitative discussion of benefits is that none of the papers cited in support of these benefits estimates use data that come from the period after Reg BI, PTE 2020-02, or the NAIC model went into effect. That is, all of the data that are used to support the alleged benefits listed above predate the effectiveness of these regulations. To the extent companies adapted to these prior rulemakings (as suggested by the DOL in its discussion of cost estimates), the magnitudes of benefits suggested in the NPRM are highly misleading.[54]

The regulatory environment has significantly changed since the 5th Circuit vacated the 2016 Fiduciary Rule. These changes include Reg BI, PTE 2020-02 (December 2020), and the widespread adoption of the NAIC Model Regulation (now adopted by 43 states). In part because of the changes required by these regulations, the DOL suggests that *costs* from adopting the new Fiduciary rule will be relatively low.[55] On the other hand, in its discussion of potential *benefits* the DOL relies exclusively on evidence from before these changes were implemented. That mismatch creates an apples-to-oranges comparison. To properly quantify potential benefits from the rule, it is important to address the extent to which these regulations may have impacted the marketplace. For example, we understand that Reg BI states that rollover recommendations are best interest advice, and incorporates PTE2020-02-like process obligations.

More specifically, the literature the DOL uses to support its potential benefits of the rule all rest on data from before the effective date of Reg BI, June 2020 as set out in Fig. 8.[56] This literature therefore, may not provide a strong basis for a sense of the size of potential benefits.

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[54] For example, State Insurance Regulators issued a statement explaining that "40 states have now adopted the NAIC's February 2020 updates to the Suitability in Annuity Transactions Model Regulation, which requires that all recommendations by agents and insurers must be in the best interest of the consumer, and that agents and carriers may not place their financial interest ahead of the consumer's interest in making a recommendation…" [and that] "[t]he regulatory environment has changed dramatically since the last time the Department of Labor made a similar fiduciary rule proposal…" See NAIC, "State Insurance Regulators Work to Protect Consumers Who Buy Annuities; NAIC Releases Statement on DOL Fiduciary Rule Proposal," November 1, 2020. https://content.naic.org/article/state-insurance-regulators-work-protect-consumers-who-buy-annuities-naic-releases-statement-dol

[55] And significantly lower than its estimates of the costs of the 2016 Fiduciary rule (see section 4 below).

[56] Federal Register / Vol. 84, No. 134, at https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12164.pdf

Fig. 8. Literature cited in the NPRM's Benefits and Transfers section[57]

Title of paper cited	DOL-identified benefits	Data coverage	Pre-Reg BI?
Alec Smith, Advisers, Brokers, and Online Platforms: How a Uniform Fiduciary Duty Will Better Serve Investors, 2017(3) Colum. Bus. L. Rev. 1200–1243 (2017), at NPRM p.75938.[58]	Regulatory Uniformity	Pre-2017	✓
Santosh Anagol, Shawn Cole & Shayak Sarkar, Understanding the Advice of Commissions-Motivated Agents: Evidence from the Indian Life Insurance Market, 99(1) The Review of Economics and Statistics 1–15, (2015), at NPRM p.75938.[59]	Regulatory Uniformity	2010	✓
Pew Charitable Trusts, Small Differences in Mutual Fund Fees Can Cut Billions from Americans' Retirement Savings, Pew Charitable Trusts Issue Brief, (June 2022), at NPRM p.75939.[60]	Rollover Investment Advice	2019	✓
John Turner & Bruce W. Klein, Retirement Savings Flows and Financial Advice: Should You Roll Over Your 401(k) Plan?, 30(4) Benefits Quarterly 42–54 (2014), at NPRM p.75939.[61]	Rollover Investment Advice	2014	✓
John A. Turner, Bruce W. Klein & Norman P. Stein, Financial Illiteracy Meets Conflicted Advice: The Case of Thrift Savings Plan Rollovers, 3(4) The Journal of Retirement 47–65 (2015), at NPRM p.75939.[62]	Rollover Investment Advice	2013	✓
Mark Egan, Gregor Matvos, & Amit Seru, The Market for Financial Adviser Misconduct, 127(1) Journal of Political Economy (February 2019), at NPRM p.75940.[63]	Annuity Investment Advice	2005-2015	✓
Vivek Bhattacharya, Gaston Illanes, & Manisha Padi, Fiduciary Duty and the Market for Financial Advice, Working Paper 25861 National Bureau of Economic Research (2020), at NPRM p.75940.[64]	Annuity Investment Advice	2013-2015	✓
Mark Egan, Shan Ge, & Johnny Tang, Conflicting Interests and the Effect of Fiduciary Duty—Evidence from Variable Annuities, 35(12) The Review of Financial Studies 5334–5486 (December 2022), at NPRM p.75941.[65]	Annuity Investment Advice	2005-2020Q2	✓

[57] NPRM p. 75937-75942.
[58] Available at https://journals.library.columbia.edu/index.php/CBLR/article/view/1730/751.
[59] Available at https://doi.org/10.1162/REST_a_00625. Note: The DOL cites the working paper version at NPRM p.75938.
[60] Available at https://www.pewtrusts.org/-/media/assets/2022/05/smalldifferenceinmutualfunds_brief_v1.pdf.
[61] Available at https://www.iscebs.org/Documents/PDF/bqpublic/bq414f.pdf.
[62] Available at https://gflec.org/wp-content/uploads/2015/04/Turner-0408Assessing-the-Standard-for-Financial-Advice.pdf.
[63] Available at https://www.nber.org/system/files/working_papers/w22050/w22050.pdf.
[64] Available at https://www.nber.org/papers/w25861.
[65] Available at https://www.nber.org/system/files/working_papers/w27577/w27577.pdf.

Ashley C. Vicere, Defining Fiduciary: Aligning Obligations with Expectations. 82(4) Brooklyn Law Review 1783 (2016), at NPRM p.75941.[66]	Annuity Investment Advice	Pre-2017	✓
Veronika K. Pool, Clemens Sialm, & Irina Stefanescu, It Pays to Set the Menu: Mutual Fund Investment Options In 401(K) Plans, 71(4) The Journal of Finance 1779–1812 (August 2016), at NPRM p.75941.[67]	Advice Given to Plan Fiduciaries	1998-2009	✓
Veronika K. Pool, Clemens Sialm, & Irina Stefanescu, Mutual Fund Revenue Sharing in 401(k) Plans, Vanderbilt Owen Graduate School of Management Research Paper (November 8, 2022), at NPRM p.75941.[68]	Advice Given to Plan Fiduciaries	2009-2013	✓
Australian Securities and Investments Commission, Report 627-Financial Advice: What Consumers Really Think, Australian Securities and Investments Commission, (August 2019), at NPRM p.75942.[69]	Reliability of advice	2018	✓
Claude Montmarquette & Nathalie Viennot-Briot, The Value of Financial Advice, 16(1) Annals of Economics and Finance 69–94 (2015), at NPRM p.75942.[70]	Reliability of advice	2010-2011	✓
Jill E. Fisch, Tess Wilkinson-Ryan, & Kristin Firth, The Knowledge Gap in Workplace Retirement Investing and the Role of Professional Advisors, 66(3) Duke Law Journal (2016), at NPRM p.75942.[71]	Reliability of advice	2015	✓
Ben Charoenwong, Alan Kwan, & Tarik Umar, Does Regulatory Jurisdiction Affect the Quality of Investment-Adviser Regulation, 109(10) American Economic Review (October 2019), at NPRM p.75942.[72]	Enforcement	2009-2014	✓

In fact, Reg BI may have resulted in changes to the market, and when assessing the incremental impact of potential new regulation such as the Proposed 2023 Fiduciary Rule, it is important to use evidence which takes into consideration these changes. Reg BI does not prohibit or restrict financial advisors from

[66] Available at https://brooklynworks.brooklaw.edu/blr/vol82/iss4/8/.
[67] Available at https://onlinelibrary.wiley.com/doi/abs/10.1111/jofi.12411.
[68] Available at https://www.nber.org/papers/w30721.
[69] Available at https://download.asic.gov.au/media/5243978/rep627-published-26-august-2019.pdf.
[70] Available at http://aeconf.com/articles/may2015/aef160104.pdf.
[71] Available at https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3875&context=dlj.
[72] Available at https://www.aeaweb.org/articles?id=10.1257/aer.20180412.

recommending any specific type of products; and all recommendations must satisfy Reg BI's obligations concerning Disclosure, Care, and Conflict of Interest.[73]

As another example, the DOL also claims that the 2023 Fiduciary Rule proposal would "generate additional benefits by extending protections to investment advice from insurance agents or independent producers to IRA investors".[74] In support of this claim, the DOL references literature that is concerned with variable annuities.[75] Variable annuities, however, are outside the claimed targeted context that the regulation addresses (explicitly, the DOL references "fixed index annuities" as of interest as not already covered by Reg BI).[76]

[73] Securities and Exchange Commission, "Regulation Best Interest: The Broker-Dealer Standard of Conduct," 17 CFR Part 240 Release No. 34-86031; File No. S7-07-18, at https://www.sec.gov/files/rules/final/2019/34-86031.pdf pp.13-14 These are 1. Disclosure Obligation, 2. Care Obligation, 3. Conflict of Interest Obligation, and 4. Compliance Obligation: establish maintain and enforce policies to remain compliant with Reg BI.
[74] NPRM, p.75939
[75] Vivek Bhattacharya, Gaston Illanes, & Manisha Padi, Fiduciary Duty and the Market for Financial Advice, Working Paper 25861 National Bureau of Economic Research (2020), at NPRM p.75940.
[76] NPRM, p.75920

5. IMPACTS ON INVESTORS

Financial professionals[77] providing investment services to investors are typically compensated for their services in one of two ways:

- Under a **fee**-based compensation structure, investors pay a recurring (e.g., annual) fee to enter into a long-term relationship with an investment adviser (IA), who manages their investments, and periodically adjusts them to account for changing market conditions and investor circumstances.
- Under a **commission**-based compensation structure, investors pay a commission on each transaction executed for them by their broker.[78] Investors in commission-based accounts may receive incidental investment recommendations from their brokers, or they may direct each trade without such recommendations, in which case the account is termed **self-directed**.[79]

Fee-based advisory relationships come with inherent costs and, as such, are typically more appropriate for individuals with significant assets to invest.[80] For those with less assets to invest, a commission account will typically make more sense.[81] For some investors—including those with more financial sophistication and those with very little to invest—a self-directed account may be appropriate; while other investors in commission accounts will seek investment recommendations from their broker.

While investors in fee-based accounts and in self-directed accounts would similarly not be directly impacted by the proposed regulation, investors in commission-based accounts currently receiving advice would be directly and materially affected (as would future investors who might, under the status quo,

[77] **Financial professionals** as used here encompasses both brokers and investment advisers (IAs). The term **broker** refers to an individual who trades securities on another's behalf, while a **dealer** trades securities on their own account; the umbrella term broker-dealer (BD) is often used to encompass both as many individuals fill both roles. An IA may be a BD, or they may rely on a BD to execute the trades they advise on behalf of their clients.

[78] In addition to commissions on transactions, brokers may also be compensated through trailing commission fees (often referred to as 12b-1 fees). These are annual payments from fund managers to the brokers whose clients are invested in the fund. Additionally, at the institutional level, fund managers may engage in revenue sharing payments to brokerages in exchange for the broker making the fund available.

[79] In some cases, such investors may have access to so-called robo-advisors, which are software-based tools that provide limited individualized investment recommendations based on user inputs. Brokers can also provide generalized investment education to investors without it historically being considered advice.

[80] The typically higher costs of advisory accounts are the result, in part, of the on-going work of the advisors who manage them, periodically re-evaluating whether the asset allocation remains appropriate for the client in light of changing market conditions or individual circumstances. Brokers servicing commission-based accounts, by contrast, typically evaluate the appropriateness of an investment at the time it is purchased, and may make different initial investment recommendations on the expectation that the investment will not re-evaluated in the same way.

[81] A 2011 survey of 25 million IRA accounts found that the majority "opted for a commission-based instead of fee-based arrangement". Those with lower account balances had higher rates of commission-based arrangements than those with higher account balances. Specifically, the survey found that 98% of investors accounts with less than $25,000 were in a brokerage relationship. Oliver Wyman (2011). As seen in American Action Forum (2017). "The Consequences of the Fiduciary Rule for Consumers." Meghan Milloy, available at https://www.americanactionforum.org/research/consequences-fiduciary-rule-consumers/

choose commission-based broker advice/recommendations). **The effect of the proposed rules will be felt primarily by smaller investors**, those generally at an earlier stage of asset accumulation, in commission-based brokerage accounts receiving investment recommendations). By raising the costs to brokers of providing investment recommendations to these investors, as well as investment education and guidance, the proposed regulation would be expected to push investors at the margins either into fee-based or self-directed accounts. Of course, many smaller investors will remain in commission-based accounts with broker recommendations. These investors can expect to see higher fees to cover the costs the rule imposes on their brokers (see chapter 3), and reduced product choice as brokers remove investment options that might lead to conflicts and compliance concerns.

These effects are similar to those that have been seen from the other recent rulemakings, including Reg BI. According to industry experts consulted by Oxford Economics, there has been a general industry shift towards fee-based advisory accounts over the past five to 10 years, driven largely by regulatory pressure. According to data from Tiburon, almost half (47%) of independent broker dealer revenue was fee-based in 2020, up from 40% in 2015. Fee-only advisors had $6.0 trillion in assets under management in 2022, up from $3.5 trillion in 2015.[82]

The DOL points to evidence from the 2016 Fiduciary Rule that it says undermines claims that small investors would lose access to advice and some financial products. It notes that while a September 2017 poll of broker-dealers found that 18% of BDs had raised their minimum account thresholds and closed smaller accounts, 82% did not do so.[83] The DOL suggests this is "inconsistent" with studies, such as that completed by Oxford Economics (2017), which found that one of the consequence of the 2016 DOL Fiduciary Rule would be that the number of small accounts served by financial advisors would decrease.[84] Given that the 2016 regulation never went into effect, however, this 18% estimate likely represents a lower-bound of the number of broker-dealers who would have raised their minimum account thresholds and closed smaller accounts.

The reduced availability of investment guidance will lead many investors to save less for retirement, with the effects most concentrated among smaller investors. In a 2021 analysis of the vacated 2016 Fiduciary Rule,[85] the Hispanic Leadership Fund (HLF), identified four ways in which the loss of financial advice and other services negatively impacts investors' savings: sub-optimal investment choices, underperformance from asset allocation, early withdrawals, and uneven contributory patterns. The HLF estimated that, were the 2016 Fiduciary Rule to be reinstated, it would reduce retirement savings for those with incomes below $100,000 by $140 billion. Black and Hispanic investors would be the most affected, with their accumulated

[82] "Tiburon Strategic Advisors, Financial Advisor Channels, 22/07/05." Slides 156, 172, 198, and 229.

[83] NPRM, p. 75946

[84] Oxford Economics, April 15 2017, "How the Fiduciary Rule Increases Costs and Decreases Costs," p. 19. This is because complying with the requirements of the 2016 Fiduciary Rule would have resulted in an increased fixed cost per account. With revenue limited by the small account size, we found that for many small accounts, the fixed cost of servicing the account would exceed revenue earned.

[85] Hispanic Leadership Fund (2021). "Analysis of the Effects of the 2016 Department of Labor Fiduciary Regulation on Retirement Savings and Estimate on the Effects of Reinstatement." https://hispanicleadershipfund.org/wp-content/uploads/2021/11/FINAL_HLF-Quantria_FiduciaryRule_08Nov21.pdf.

IRA savings projected to be 20% lower after 10 years. Although these results were based on modeling the provisions of the 2016 Fiduciary Rule, the general prediction that reduced access to retirement investment guidance will lead smaller investors to reduce their retirement savings, with Black and Hispanic investors disproportionately affected, applies to the proposed 2023 Fiduciary rule as well.

In summary, if the proposed 2023 Fiduciary Rule goes into effect, we would expect to see the following impacts on investors, concentrated on the mostly smaller, less-sophisticated investors in commission-based accounts currently receiving investment recommendations:

- On the margin, some of these investors would be **pushed into fee-based accounts** that are less appropriate for smaller investors.
- Some investors would be pushed into self-directed accounts, and thus **lose access to advice**.
- Owing to the decrease in available professional investment guidance, some individuals will **not open retirement accounts they otherwise would have or will contribute less** to accounts they do open.
- Those remaining in commission-based accounts with investment recommendations would see **increased costs and reduced product choice** as a result of the rules.

5.1 THE POTENTIAL FOR SUBSTITUTION

Although the DOL argues that the extent to which small investors would lose access to investment advice as a result of the proposed regulation has been overstated, it does acknowledge that "it is possible that, as the market evolves, small investors and the firms that serve them will increasingly move away from commission-based full-service or 'advised' brokerage accounts or commission-compensated advice from insurance agents". However, the DOL argues, small investors who lose access to traditional investment advice and recommendations may still be served by one of the following alternatives:

- Hourly engagement or subscription-based firms;
- Receiving advice directly from investment firms;
- Target date funds; and
- Robo-advisors.[86]

It is remarkable that, of the four alternatives that the DOL proposes to what it characterizes as over-priced and conflicted advice from registered representatives, two of these represent advice from other financial professionals that is either more expensive (hourly engagement or subscription-based firms), or more conflicted (receiving advice directly from investment firms, which, the DOL notes, "tends to focus on in-house funds and investments") than the advice it is meant to supplant.

Additionally, target date funds, while appropriate for certain small investors, represent an investment option for investors managing self-directed investment accounts rather than a true alternative to investment advice, education, and guidance from a financial professional. These funds also have their own

[86] NPRM, p. 75946-75947.

disadvantages, including that they may be insufficiently tailored to some investors' needs, have fee structures that are not always transparent, and can be inappropriate during uncertain economic conditions.[87]

Of the four options the DOL lists, robo-advisors come the closest to offering a true alternative to the advice, education, and guidance that small investors are likely to lose as a result of the proposed regulation. Robo-advisors are a promising innovation in the financial advice market, which may be appropriate for many small investors; however, they too have drawbacks, and their adoption has not been as successful as hoped. The DOL cites a 2016 report by Deloitte to argue that robo-advisors are gaining market share; however, that report discusses the German robo-advisory market, which is not necessarily relevant to the US advisory market.[88] In 2023, Investopedia surveyed 205 robo-advisor users in the US across 18 platforms to understand how they used these platforms, and found that respondents were most likely to use robo-advisors to invest for large purchases rather than to build wealth for retirement.[89] Some industry experts have observed that robo-advising has not had the "game changing" impacts predicted.[90] A report by Parameter Insights found a decline in the use of robo-advisors from 27.7% of the US investors in 2021 to 20.9% in 2022.[91] Timothy Welsh, president and CEO of Nexus Strategy, said of BlackRock's offloading its robo-advisor platform FutureAdvisor to Ritholtz Wealth Management in 2023: "I think it is the final nail in the robo-advisory coffin. If a firm of the size, strength, brand and reach of of Blackrock could not make it work, then no one can."[92] Additionally, customer costs for digital advice platforms may rise given the the SEC's recently proposed rule around conflicts of interest with the use of predictive data analytics by broker-dealers and investment advisers.[93]

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[87] Tony Dong, 2022, "3 Pros, 3 Cons of Target-Date Funds," *US News,* August 15. https://money.usnews.com/investing/articles/target-date-funds-pros-cons According to Rick Lear of Lear Investment Management, "target-date funds are based on the premise of static asset allocation, which assumes bonds are always less risky than stocks. This is not the case in a period of rising inflation and higher interest rates."

[88] Deloitte, 2016, The Expansion of Robo-Advisory in Wealth Management, available at https://www2.deloitte.com/content/dam/Deloitte/de/Documents/financial-services/Deloitte-Robo-safe.pdf

[89] Just under 50% of the respondents stated that they are most likely to use robo-advisor to plan for purchasing a home, followed by 42% using the services to purchase a car. Only 16% of the respondents stated that they use robo-advisors to "build wealth for retirement," and "9% said they use robo-advisors to build long-term wealth." Investopedia, 2023, "Investopedia's 2023 Robo-Advisor Consumer Survey" available at https://www.investopedia.com/investopedias-2023-robo-advisor-consumer-survey-8303191.

[90] Fintech Global. May 16, 2023, "Is the era of robo-advisors over?" https://fintech.global/2023/05/16/is-the-era-of-robo-advisors-over.

[91] Parameter Insights. As cited in InvestmentNews (2022). "Robo-advisers struggling to retain investors in 2022, research finds," available at https://www.investmentnews.com/robo-advisers-struggling-retain-investors-in-2022-research-finds-227476.

[92] *See* Fintech Global. May 16, 2023.

[93] *See* Federal Register, September 2023," Conflicts of Interest Associated With the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers: A Proposed Rule by the Securities and Exchange Commission" available at https://www.federalregister.gov/documents/2023/08/09/2023-16377/conflicts-of-interest-associated-with-the-use-of-predictive-data-analytics-by-broker-dealers-and

Especially in periods of uncertainty, human financial advisors can help their clients focus on the long term, and prevent potential early withdrawals, helping them achieve their long-term financial goals.[94] Those who have assets invested in target date funds and/or managed by robo-advisors would not have a financial advisor to remind them of their long-term goals, which could result in early withdrawals.

5.2 THE UK EXPERIENCE

In support of the proposed regulation, the DOL cites international experience with financial reforms aimed at addressing conflicted advice, especially that of the United Kingdom's Retail Distribution Review (RDR), which went into effect in January 2013. The RDR increased the required qualifications for advisers, raised requirements around transparency of charges and services, and removed commission payments to advisers and platforms from product providers.[95] The DOL sums up the UK's experience with the RDR thus: "While there are transitional costs… the changes have resulted in a modest increase in the number of adults accessing financial advice as well as their satisfaction with the advice they are receiving."[96]

However, the UK experience is not so straightforward. According to the 2020 evaluation of the RDR by the UK's Financial Conduct Authority (FCA), "many consumers do not seek, or receive, the sort of help with their finances that would equip them to make better investment decisions" and "the current regulatory framework may pose challenges to further market development in sufficiently meeting these consumer needs".[97] Regarding the use of robo-advisors and similar services, the FCA, in its 2020 evaluation of the impact of the Retail Distribution Review, found that "[t]here are particular challenges to consumers' engagement with automated services. Specifically, only 1.3% of adults in the UK used automated services in 2020."[98] A 2022 FCA consultation paper recognizes the continued barriers for investors; while at least 15.6 million UK consumers had over £10,000 in investable assets, 55% of these held the majority or all of this in cash.[99]

The DOL concludes that the RDR did not result in a significant reduction of advice. However, the FCA and HM Treasury found that the number of investment advisors declined from a little over 40,000 in 2011 to about 31,000 in 2014, attributing part of that decrease to the introduction of the RDR.[100] Additionally, according to *FTAdviser*, 1,681 advice companies left the market and cancelled their authorizations with the

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[94] Churchill Management Group. February 9, 2021. "What Should Your Financial Advisor Do in a Volatile Market." https://www.churchillmanagement.com/what-should-your-financial-advisor-do-in-a-volatile-market/.

[95] *See* Financial Services Authority, February 2012, "Retail Distribution Review: Independent and restricted advice," Guidance Consultation, available at https://www.fca.org.uk/publication/guidance-consultation/gc12_03.pdf.

[96] NPRM, p. 75948.

[97] *See* Financial Conduct Authority, December 2020, "Evaluation of the impact of the Retail Distribution Review and the Financial Advice Market Review," available at https://www.fca.org.uk/publication/corporate/evaluation-of-the-impact-of-the-rdr-and-famr.pdf.

[98] Ibid, p.8.

[99] *See* FCA, November 2022, " Broadening access to financial advice for mainstream investments", available at https://www.fca.org.uk/publication/consultation/cp22-24.pdf.

[100] *See* FCA and HM Treasury, 2016, "Financial Advice Market Review: Final Report," March 2016, available at https://www.fca.org.uk/publication/corporate/famr-final-report.pdf.

regulator in the years 2015 to 2020.[101] This decline in the supply of financial advice serves to widen the advice gap, with some investors relying on affordable services not receiving the advice they need.[102]

[101] FT Adviser, April 29 2020, "IFA numbers fall for first time since RDR," available at https://www.ftadviser.com/your-industry/2020/04/29/ifa-numbers-fall-for-first-time-since-rdr/

[102] See Andrew Clare, Stephen Thomas, Omal Walgama, and Christina Makris, June 2013, "The impact of the RDR on the UK's market for financial advice Challenge and opportunity," Cass Consulting, available at https://www.bayes.city.ac.uk/__data/assets/pdf_file/0016/202336/The-impact-of-RDR-Cass-version.pdf

6. CONCLUSION

The DOL argues in the NPRM that the costs of the proposed 2023 Fiduciary Rule would be small given that the investment services industry has, over the last several years, already had to adapt to similar fiduciary or best interest requirements from other regulations. These other regulations include Reg BI, the model NAIC regulation relating to insurance products now in place in most jurisdictions, PTE 2020-02, and the 2016 Fiduciary Rule, for which the industry implemented significant changes before it was overturned by the courts.

At the same time, the DOL argues that the benefits from the proposed regulation would be substantial in spite of these existing regulations and the changes that the industry has gone through, although it provides no evidence, studies, or data to quantify these benefits.

These two lines of argument are in tension with one another. In fact, while both the costs and benefits of the proposed rule have likely been reduced by the regulatory changes that have taken place since the 2016 Fiduciary Rule, there is good reason to believe that this applies more to benefits than to costs. When two regulations impose the same or similar standards on an investment transaction, the benefit of this dual-coverage is likely to be marginal, while the costs to revise software, train employees, revise disclosures, print and transmit new disclosures, and update operational as well as supervisory policies and procedures, and document transaction-by-transaction compliance will still be substantial.

Based on the survey responses, we estimate that the upfront cost for the proposed 2023 Fiduciary rule will be approximately $238 million, over six times the DOL's estimate of upfront costs ($37 million). Our estimate of the ongoing annual cost of the rules, $2.5 billion, is almost 11 times the DOL's estimate ($216 million.

The class of investment purchases that would potentially see benefits from the proposed regulation—non-securities investments purchased for retirement accounts in states which do not already have regulations imposing a fiduciary or best interest standard—is small.

The burden of the proposed regulation is expected to fall primarily on the small, relatively less sophisticated investors who rely on investment recommendations in commission-based retirement accounts. These investors are likely to see higher fees and reduced product choice. At the margins, smaller investors are likely to lose access to investment recommendations, while those with somewhat larger accounts may be pushed into higher-cost fee-based services.

APPENDIX: SURVEY OF FSI MEMBERS

SURVEY METHODS AND ASSUMPTIONS

Oxford Economics, in consultation with FSI, prepared and distributed a survey to representatives at FSI member firms. The survey was fielded between November 20 and December 6, 2023. In total, 15 responses were received from independent financial services firms; seven from large firms, six from medium firms, and two from small firms.[103] Collectively, these firms represent approximately over 26,000 financial advisors (FAs) and had a total revenue of over $14.5 billion.[104]

Respondents were asked about their expected costs to implement the proposed 2023 Fiduciary Rule, as well as their costs to comply with Reg BI, and, for upfront costs, with the vacated 2016 Fiduciary Rule and PTE 2020-02. **All cost estimates presented below for each of these regulations are based on the FSI member survey.**

Respondents were asked to estimate the total costs for their organizations, including their independent affiliates. Based on these responses about total firm costs, Oxford Economics calculated costs on a per-FA basis. We then calculated the median per-FA cost from valid responses,[105] and scaled these to produce industry wide estimates.

Per-FA cost estimates were then scaled to a total of 624,674 FAs nationally, based on FINRA data.[106] All of these FAs were assumed to have been affected by Reg BI.[107] The total number of financial advisors who would be affected by the proposed 2023 Fiduciary Rule, PTE 2020-02, and the 2016 Fiduciary Rule was assumed to be 393,546, based on the assumption that only 63% of FAs service retirement accounts.[108] To calculate the industry level impact, we multiplied the per financial advisor estimated values by the total number of impacted financial advisors for each rule.

To calculate the total costs associated with staff time, we used compensation assumptions from the NPRM, which are extremely conservative assumptions.[109] Specifically, we assumed the hourly compensation for FAs to be $219 and for support staff to be $63.

[103] Small firms are those with revenue less than $50 million, and large firms those with revenue greater than $500 million.
[104] Data provided by FSI.
[105] Some firms answered every question but entered 0s that were nonsensical. These 0s were treated as missing.
[106] FINRA. 2020 Industry Snapshot. Accessed 12/15/2023. https://www.finra.org/rules-guidance/guidance/reports-studies/2020-industry-snapshot/representative-data.
[107] For consistency and simplicity, we used 2023 FA totals throughout the calculations.
[108] This was the value used in the DOL's 2016 RIA, we assume that 63% of all brokers service retirement accounts. Note that we conservatively assume that all FAs at surveyed FSI member firms service retirement accounts.
[109] NPRM p. 75949. Note that these values represent both wages and costs for other forms of compensation, such as benefits.

CALCULATIONS

Upfront costs

We estimate the total upfront costs for the proposed 2023 Fiduciary Rule to be approximately $238 million, including costs related to upgrading software, external legal and consulting costs, and staff time.

Per FA costs for each of the three categories were calculated as medians from the suvey of FSI members as described above. Hourly salary assumptions are as described above. The calculations are presented in Fig. 9.

Fig. 9. Upfront Cost Calculations

	2016 Rule	Reg BI	PTE 2020-02	2023 Fiduciary Rule
Total number of FAs	393,545	624,674	393,545	393,545
Software				
Per-FA cost ($)	208	400	181	236
Total cost ($ million)	82	250	71	93
Legal/Consulting				
Per-FA cost ($)	408	150	95	106
Total cost ($ million)	161	94	37	42
Rule Review Costs				
Hours per FA	4.1	2.7	1.2	1.2
Hourly compensation ($)	219	219	219	219
Total cost ($ million)	353	369	103	103
Total cost ($ million)	**596**	**713**	**211**	**238**

Source: Oxford Economics

Ongoing costs

We estimate the annual ongoing costs for Reg BI and the proposed 2023 Fiduciary Rule to be approximately $4.9 billion and $2.5 billion, respectively. This includes extra time spent on client interactions to ensure and document compliance, both by FAs and by support staff, as well as direct printing and mailing costs for additional disclosures.

Additional minutes per client interaction were calculated as the median of additional minutes per client interaction reported directly on the suvey. The survey asked for the total number of additional such interactions per firm, which was adjusted to a per-FA value; the median of this number of interactions was used in the calculations. Hourly salary assumptions are as described above.

The calculations are presented in Fig. 10.

Fig. 10. Ongoing Costs Calculations

	Reg BI	Proposed 2023 Fiduciary Rule
Total number of FAs	624,674	393,545
FA time		
Minutes per client Interaction	15	15
Annual number of such interactions per FA	111	97
Hourly salary assumptions ($)	219	219
Total cost ($ million)	3,796	2,090
Support staff time		
Minutes per client Interaction	13	10
Annual number of such interactions per FA	111	97
Hourly salary assumptions ($)	63	63
Total cost ($ million)	946	401
Papper disclosures		
Per-FA cost ($)	228	111
Total costs ($ million)	142	44
OE Estimated Total Cost ($ million)	**4,884**	**2,535**

Source: Oxford Economics

Pieces of paper

We estimate the total increase in pieces of paper printed annually due to the disclosure requirement for Reg BI to be approximately 272 million and 120 million for the proposed 2023 Fiduciary Rule. The per-advisor pieces of paper from the FSI member survey was used to scale up to industry totals. Calculations are presented in Fig. 11.

Fig. 11. Annual Number of Pieces of Paper Calculation

	Reg BI	Proposed 2023 Fiduciary Rule
Total Number of Financial Advisors	624,674	393,545
Pieces of paper per Financial Advisor	435	305
OE Estimated Total Pieces of Paper (million)	**272**	**120**

Source: Oxford Economics

Global headquarters
Oxford Economics Ltd
Abbey House
121 St Aldates
Oxford, OX1 1HB
UK
Tel: +44 (0)1865 268900

London
4 Millbank
London, SW1P 3JA
UK
Tel: +44 (0)203 910 8000

Frankfurt
Marienstr. 15
60329 Frankfurt am Main
Germany
Tel: +49 69 96 758 658

New York
5 Hanover Square, 8th Floor
New York, NY 10004
USA
Tel: +1 (646) 786 1879

Singapore
6 Battery Road
#38-05
Singapore 049909
Tel: +65 6850 0110

Europe, Middle East and Africa

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Asia Pacific

Singapore
Hong Kong
Tokyo
Sydney

Email:
mailbox@oxfordeconomics.com

Website:
www.oxfordeconomics.com

Further contact details:
www.oxfordeconomics.com/
about-us/worldwide-offices