

Congress of the United States
Washington, DC 20515

April 17, 2023

The Honorable Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chairman Gensler:

It has come to the attention of Congress that the Securities and Exchange Commission (SEC) is considering the possibility of amending or rewriting Regulation Best Interest (Reg BI). Reg BI was adopted by the SEC in June 2019 after an exhaustive, years-long examination of broker-dealer standards of conduct by both Congress and the SEC.

Reg BI increased protections for investors and established a strong, national standard of conduct for broker-dealers to follow when making investment recommendations to their customers.

Unfortunately, since the SEC first proposed Reg BI in 2018, the rule has come under incessant scrutiny from a cottage industry of special interest groups purporting to represent investors who seek to restrict access to financial advice and investment products for millions of American households.¹

When adopting Reg BI, the SEC wisely chose to implement a rule that balanced enhanced standards for brokers with the need to ensure investors – particularly lower and middle income investors – did not lose the ability to work with a financial professional.

There is no credible evidence to date that Reg BI is not working as intended, or that investor protections have been weakened as a result of Reg BI being in place. The deliberative and evidence-based approach taken by the SEC with Reg BI contrasted sharply with the anti-investor approach taken by the Department of Labor (DOL) in 2016 with its so-called “fiduciary” rule. Under the DOL rule, it was estimated that nearly 7 million individual retirement account (IRA) owners would have lost access to investment advice, while over two-thirds of financial advisors stated they would have to stop providing advice to accounts under \$25,000 due to the cost restrictions of the rule.² Fortunately for investors, the DOL rule was struck down by the courts.

It is telling that many of the same “advocates” who actively supported the 2016 DOL rule are now calling on the SEC to amend Reg BI. The SEC should reject these calls and instead focus on ensuring robust oversight of the principles set forth in Reg BI as written, and avoid attempts to

¹ <https://www.investmentnews.com/investor-advocate-urges-gensler-to-beef-up-reg-bi-205467>

² The Data Is In: The Fiduciary Rule Will Harm Small Retirement Savers (2017), available at https://www.uschamber.com/assets/documents/ccmc_fiduciaryrule_harms_smallbusiness.pdf

rewrite or “freshen” the rule through guidance, “FAQs,” or other methods that likely violate the Administrative Procedure Act (APA).

Given all that is at stake for American investors and the SEC’s reputation regarding this critical issue, please respond to the following questions and requests by no later than fourteen (14) days from the date of this letter:

1. An estimate of the total number of staff hours and the total costs associated with the staff hours incurred by the SEC in connection with proposing, finalizing, and overseeing implementation of Reg BI since 2017;
2. An estimate of the cumulative cost already borne by the broker-dealer industry to comply with Reg BI, as well as a cumulative estimated annual cost for ongoing compliance with Reg BI for the broker-dealer industry, and analysis of those costs against the SEC’s own cost estimates set forth in the final rule;
3. A copy of any internal memos, e-mails, or other documents used to support issuance of the Division of Examinations’ January 30th, 2023, risk alert entitled “Observations from Broker-Dealer Examinations Related to Regulation Best Interest”; and
4. A list (including times, dates, and names of all attendees) of meetings that involved matters related to Reg BI held by you, members of your direct staff and members of the career SEC staff with the following organizations since April 17th, 2021:
 1. Consumer Federation of America;
 2. AFL-CIO;
 3. Center for American Progress;
 4. North American Securities Administrators Association;
 5. Institute for the Fiduciary Standard; and
 6. XY Planning Network.

Sincerely,



Byron Donalds
Member of Congress