



Written Testimony of Kamila Elliott, CFP®

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Before the U.S. House of Representatives

Financial Services Committee

Subcommittee on Capital Markets

January 10, 2024

Chair Wagner, Ranking Member Sherman, and distinguished Members of the Subcommittee, thank you for the opportunity to testify today regarding the Department of Labor's (Department or DOL) Retirement Security Rule and related Prohibited Transaction Exemptions.

My name is Kamila Elliott, and I served as the 2022 Chair of CFP Board. I appear here today in support of the Department's Retirement Security Rule. **Moderate-income Americans saving for retirement should receive the same access to best interest financial advice that wealthy Americans receive.** I respectfully request that this entire statement, and CFP Board's comment letter to the DOL,¹ be entered into the hearing record.

CFP Board operates the CFP® certification program, which sets high standards of competency and ethics for financial planners. Today, more than 98,000 CFP® professionals (or approximately one-third of retail financial advisors) voluntarily commit as a part of their certification to act as a fiduciary, and therefore, act in the best interests of the client, at all times when providing financial advice. CFP® professionals operate under different business and compensation models and provide professional services on behalf of investment advisers, broker-dealers, insurance companies, banks, and trust companies.

I spent the earlier part of my professional career at Vanguard working with ultra-high net worth individuals, endowments, and foundations. Now I am the founder and CEO of the financial planning firm, Collective Wealth Partners. We are a majority women- and Black-owned Registered Investment Adviser firm headquartered in Atlanta, Georgia. We provide holistic financial planning advice primarily to resilient communities.² Although I serve some high net-worth clients, my clients primarily are black, moderate to high income investors.

Unfortunately, resilient communities are especially vulnerable to receiving incompetent and unethical advice that can erode retirement savings, regardless of the saver's net worth. In 2021, I co-authored a paper that reported that, during their lifetime, a typical Black family will accrue roughly 70% less in wealth than a typical white family.³

We know that, in these resilient communities, every dollar counts. My clients are working to increase their financial literacy and net worth, and to close the racial wealth gap. The goal of my firm is to provide our clients with holistic, lifetime assistance so they can build financial independence for themselves and their families. This includes comprehensive advisory services about retirement, taxes, estate planning, investment strategy, and insurance, all provided in accordance with a fiduciary standard of conduct, in their best interests.

The Proposed Rule is Consistent with the Purpose and Meaning of ERISA

Congress enacted ERISA to protect assets held in tax-preferred retirement savings vehicles from market abuses. Congress recognized that retirement assets are important to workers and the U.S. economy and intentionally established high standards for retirement investment advice under ERISA and conditional prohibitions of conflicts of interest under ERISA and the Internal

¹ Attached as Attachment A, *also avail. at* <https://www.cfp.net/-/media/files/cfp-board/news/2024/cfp-board-dol-retirement-security-comment-letter.pdf?la=en&hash=4E82CD3329A8E3C7285B5EE0B6AD1614>.

² "Resilient communities" means Black and brown communities who are working to close the wealth gap and who are seeking competent and ethical financial advice. A term often used is "underserved communities." However, underserved has a negative connotation. These communities do have barriers to accessing competent and ethical financial planning. However, these communities work to increase their financial literacy and net worth. Their resilience is slowly closing the racial wealth gap.

³ Kamila Elliott, CFP® and Brad Kessler, CFP®, Two American Financial Plans: The Next 50 Years of the Racial Wealth Gap and What You Can Do About It. Attached as Attachment B, *also avail. at* <https://theracialwealthgap.com/>.

Revenue Code. Congress gave the Department a mandate to protect retirement assets through effective regulation, including broad authority to define the term “fiduciary.”

The investment landscape has changed dramatically since Congress enacted ERISA in 1974 and when the Department promulgated the regulation defining fiduciary advice. Due to the proliferation of 401(k) plans, the popularity of IRAs, and a shift from defined benefit plans, most workers today cannot count on a pension. Indeed, most workers today are personally responsible for managing their own retirement savings and making their own investment decisions. However, most of these investors have little experience and lack access to information important to making investment decisions. With so much at stake, investors now want, need, and expect financial advice in their best interests. Even if the 1975 regulatory definition encompassed most retirement investment advice at that time, the regulatory definition now fails to protect retirement investments today by unduly excluding a sizable portion of modern retirement investment advice.

The Proposed Rule Will Not Reduce Access to Retirement Investment Advice

The DOL’s proposed Retirement Security Rule would require financial professionals to act in their clients’ best interests when providing retirement investment advice. This shouldn’t cause firms to abandon moderate-income clients, including people of color. Moderate-income individuals are the people who most need high quality advice that is not tainted by conflicts of interest because they need to make every dollar count. The proposed rule recognizes that moderate-income workers should receive the same access to best interests advice that the wealthy worker receives. **If the Department’s proposed rule is adopted, it is not the moderate-income American who will lose access to financial advice. It is the financial professional who will lose access to substantial compensation for advice that is not in a moderate-income American’s best interests.**

CFP Board is a professional body that adopted a fiduciary obligation in response to changes in investor needs and expectations. In 2007, CFP Board adopted *Standards of Professional Conduct* that required a CFP® professional to make a commitment to CFP Board, as part of their certification, to act as a fiduciary when providing financial planning or material elements of financial planning to a client. Later, in 2018, CFP Board adopted its *Code of Ethics and Standards of Conduct* (the “*Code and Standards*”), which expanded the fiduciary obligation to all financial advice.⁴ CFP Board recognized that clients reasonably expect financial advice provided in their best interests, regardless of the CFP® professional’s business model.

When CFP Board revised its *Code and Standards* to include a fiduciary standard that applies to all financial advice, many predicted that CFP® professionals would give up the CFP® certification to avoid fiduciary responsibility. Just the opposite happened. The number of CFP® professionals grew from 79,878 in March 2018 when the *Code and Standards* was adopted to 98,873 in December 2023, a 23.8% increase. The demand for CFP® professionals from firms across business models continues to be strong, notwithstanding this heightened standard. CFP® professionals operate under many business models, including broker-dealer, investment adviser, and insurance.⁵ Charging commissions is not incompatible with a strong fiduciary standard, and it is not incompatible with the DOL proposal.

⁴ Attached as Attachment C, *also avail. at* <https://www.cfp.net/-/media/files/cfp-board/standards-and-ethics/cfp-code-and-standards.pdf?la=en&hash=AFC0087B53EDE26B2A478BD84DF7DDA3>.

⁵ 67% of CFP® professionals are registered representatives of broker-dealers; 88% are investment adviser representatives of registered investment advisers; and 64% hold insurance licenses.

CFP® professionals have shown that any financial professional who wants to act in their client's best interest is able to do so, regardless of their business model, what products they offer, or how they are compensated. The compensation models that financial professionals offer are diverse and continue to evolve, with choices that extend beyond commissions and assets under management fees. For example, some financial professionals charge hourly rates, subscription fees, or point in time advice for a set fee.

In 2019, in recognition of the expansion of the number of retail investors and the complexity of many products, the Securities and Exchange Commission (SEC) reaffirmed the fiduciary standard for investment advisers and adopted Regulation Best Interest for broker-dealers. As with the adoption of CFP Board's fiduciary duty, there is no evidence that Regulation Best Interest, which is based upon fiduciary principles, has reduced moderate-income investors' access to investment recommendations. The DOL has aligned the proposed rule with the requirements of Regulation Best Interest.

Even if some financial professionals decide not to provide financial advice to moderate-income clients because of the proposed rule, other financial professionals like me would step in. Moderate-income people are the bulk of my firm's client base. We have flexible compensation arrangements that are based on the complexity of the client's financial situation. We have no minimum asset requirement for investment management services. We can work with a client to provide them with what they need at a price they can afford. This is how we meet our clients' financial needs across the income spectrum. My firm is not the only firm that serves these clients. I personally know many other CFP® professionals who work with moderate-income clients in similar ways. There are firms all over America that stand ready to serve retirement savers of more modest means with best interest advice.

Sales Recommendations Should not be Excluded from Fiduciary Requirements

We heard from opponents who challenged the rule back in 2016, and from those challenging the new proposed rule now, that a person who is making a sales recommendation is not offering advice. But I am not aware of any financial professional making a sales recommendation – many of whom refer to themselves as advisors – who clearly tells retirement investors that they do not have a relationship of trust and confidence in the way that the opponents of the 2016 rule or the new proposed rule say they do. I am not aware that these advisors say to investors:

- I am a salesperson.
- Don't trust me.
- I am acting in my own self-interest.
- Working with me is like buying a car. I am inviting you to buy an investment product in the same way that a car dealer invites you to buy a car.
- The fact that I am urging you to buy a product does not mean that the product is in your best interests.

A consumer who loses access to a financial professional who is merely engaged in an arms-length commercial sales transaction *cannot be deemed to have lost access to investment advice*.

Opponents of the proposed rule also say that the best interest standard should not apply to someone who is getting paid on a one-time, commission basis rather than getting paid over time. That is a red herring. How a financial professional is paid should not determine whether they must act in their client's best interests when providing retirement investment advice. It is the delivery of retirement investment advice, and not the method of compensation or term of the

advice, which is relevant in determining the standard of conduct that should apply. Those providing retirement investment advice invite the recipient to trust the giver of the advice.

The proposed rule appropriately applies to one-time, rollover advice. The SEC's Regulation Best Interest, NAIC's Model Regulation and CFP Board's *Code and Standards* all apply the fiduciary duty to one-time financial advice. Securities and insurance regulators require financial professionals to act in an investor's best interest when providing financial advice, regardless of how the financial professional is paid or the length of the relationship. In 2019, the SEC reaffirmed the fiduciary standard for investment advisers and adopted Regulation Best Interest for broker-dealers, which is drawn from "key fiduciary principles." Even the National Association of Insurance Commissioners (NAIC) Model Regulation,⁶ which has been adopted by most states, covers one-time advice.

The complete exclusion of one-time advice from the current regulatory definition of fiduciary ignores a significant portion of retirement investment advice that financial professionals provide for a fee or other compensation, direct or indirect. The exclusion also downplays the significant and often irreversible consequences of one-time advice.

I often see how this exclusion of one-time advice can have long term consequences for an individual's long-term success. Before being introduced to me, one of my clients was sold a fixed annuity at the age of 48 with a stated interest rate of less than 2.5% and a surrender period of seven years. This means that for seven years, she will receive a less than market rate return unless she pays a penalty on over 60% of her retirement assets. The financial professional made this recommendation met with her only once.

A one-time and irrevocable decision as to whether and how to roll over employer-sponsored retirement assets may be the single most important financial decision a retirement investor ever will make, with the potential to have a significant negative effect on the length or quality of the investor's retirement. This decision must be protected.

Existing Regulation, Including Regulation Best Interest and the NAIC Model Rule, Are Not Enough

Existing best interest advice regulations also do not cover significant retirement investment recommendations. The scope of both Regulation Best Interest and the NAIC Model Regulation are limited to recommendations to retail customers, and thus they do not apply to recommendations to employers who sponsor 401(k) plans. Further, neither Regulation Best Interest nor the NAIC Model Regulation cover real estate, many insurance products, commodities, certificates of deposit, other bank products, and certain cryptocurrencies. The proposed rule is needed to fill these gaps.

Retirement Investment Advice That is Not in the Client's Best Interests May Significantly Decrease the Length and Quality of Americans' Retirement

The complexity of product options today makes it challenging for investors to manage their retirement savings. Most retirement investors do not understand them. Financial professionals have expertise that the American worker lacks. Retirement savers need their help. They want

⁶ CFP Board's first comment letter to the Department of Labor, filed on November 14, 2023, attaches a guide that addresses the shortcomings of the NAIC Model Regulation. The guide is attached as Attachment D, *also avail. at* <https://www.cfp.net/-/media/files/cfp-board/standards-and-ethics/compliance-resources/naic-comparison-guide.pdf?la=en&hash=6BB8B19F88D0BA582E55DAB195F9BED1>

someone they can trust. But that trust and confidence often is misplaced. Financial advisors can take advantage of regulations that do not require them to work as a fiduciary, in their client's best interests.

CFP Board agrees with the Department that financial professionals and their firms should not be allowed to recommend products, services, or account types that maximize their own revenues but come with excessively high costs, unnecessary risks, or illiquidity to the disadvantage of the investor. Workers and retirees seek a financially secure and dignified retirement and deserve to have financial professionals delivering financial advice in their best interests.

There are real life consequences for Americans who do not receive advice that is in their best interests. The impact on retirement assets can be significant. Investors might experience small differences each year. Over time, however, these small differences can lead to enormous losses of retirement balances, with significant consequence for an investor's retirement security. For some, this may mean having to retire much later than they desire. For others, this may mean not having enough money to spend in retirement, including on expenses related to health care, medications, housing, and food.

Requiring financial professionals to provide retirement sales recommendations under a fiduciary standard will result in millions of Americans gaining access to retirement investment advice that is in their best interests. When financial professionals act as fiduciaries, we are taking steps to close the wealth gap that exists today. ***The wealthy receive financial advice that is best for them. Why shouldn't those with moderate incomes be treated the same?***

In closing, on behalf of CFP Board, I commend the Department of Labor for taking steps to modernize the regulatory framework to account for changes in the retirement investment landscape and the reasonable expectations of retirement investors. A strengthened standard, meeting a retirement investor's reasonable expectation of a relationship of trust and confidence, is necessary and appropriate under ERISA. CFP Board urges Members of Congress to support the proposed rule on behalf of constituents who are saving and investing for a financially secure retirement.