Democracy Dies in Darkness

ECONOMIC POLICY

Insurance lobbyists block federal crackdown on costly retirement advice

The financial services industry has blocked the Biden administration from requiring brokers to put retirees' needs first — above lucrative commissions.

By Tony Romm

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To protect older Americans' life savings, President Joe Biden pledged in October to crack down on financial advisers who recommend investments just because they pay higher commissions. Then the insurance industry got to work.

Lobbying groups representing New York Life, Lincoln Financial Group, Prudential Financial and other companies first pushed back against the newly proposed regulations before suing to topple them entirely. Now the government's latest attempt to protect retirees is in political and legal limbo, facing the possibility that it may never take effect.

It is the latest example of a pervasive pattern: As the Biden administration tries to impose new restrictions on powerful industries, those businesses successfully turn to Congress and the courts for a reprieve. This time, the resulting clash centers on a basic question: Should federal law require more financial professionals to put retirees' needs above all else — including their own paychecks — when they offer advice about how to invest?

In April, the Labor Department finalized rules that would subject a wide array of brokers to a higher legal standard, requiring them to act as fiduciaries. The effort primarily aims to protect the millions of Americans who leave their jobs, or otherwise need to roll over their retirement savings, and opt for tax-advantaged accounts such as IRAs — transactions that exceeded $770 billion in 2022 alone, according to federal estimates.

These savers face critical, one-time decisions about what to do with their money, and a miscalculation caused by conflicted investment advice could cut deeply into their retirement funds. But the Biden administration's attempts to ensure Americans receive the best guidance have sparked immense political backlash, as financial services and insurance professionals try to avert what they see as costly, illegal federal mandates.

In July, the industries scored a string of critical early victories: Congress took the first step toward invalidating the new rules, while judges in two federal courts blocked the government from implementing the proposal nationwide in September, as planned, potentially setting the stage for the regulations to be scrapped.

Micah Hauptman, the director of investor protection at the Consumer Federation of America, predicted additional delays as the fight winds its way to the Supreme Court — adding to the high stakes for Americans who already face confusing choices about what to do with their retirement money.

"Conflicted advice is very costly to retirement savers," he said. "It can mean the difference between tens if not hundreds of thousands of dollars in lost savings over time."

The American Council of Life Insurers, one of the organizations that sued, declined to comment. But it cheered the court ruling in an unsigned statement last month, adding that the new fiduciary requirements threaten to "deprive millions of consumers [of] access to much needed retirement financial guidance and protected lifetime income products."

At the heart of the wrangling is a 1970s federal law, the Employee Retirement Income Security Act, which governs retirement programs and the professionals who advise Americans about their options. Lawmakers adopted the statute, known as ERISA, long before 401(k) plans overtook pensions as the primary way that Americans save for retirement — resulting decades later in what the White House has described as a set of persistent "loopholes."

Federal officials contend the gaps are especially glaring in the market for certain annuities, a product that sees retirees hand over funds to an insurance company in exchange for a fixed payout annually. These investments can protect an individual from losing money, since they are not subject to the daily whims of individual stocks. But the products may also come with costly restrictions, including steep penalties for early withdrawals and caps on the returns that retirees can generate over their lifetimes.

Ultimately, fixed-index annuities may not be the best choice for everyone, yet the government says savers can be steered toward them anyway, especially if insurance agents earn more money selling these products over better alternatives. The dynamic prompted the Biden administration in October to pledge new oversight of the broader financial services industry, by treating more agents as fiduciaries who could face private lawsuits, tax penalties and other punishments if they fail to put investors' needs first.

Finalized in April, the rules would newly cover many agents who provide one-time advice to investors, as well as financial service professionals who advise small businesses about the investments to include in their 401(k) plans. In doing so, the government aims to ensure that financial advisers "give advice that's prudent, that's loyal, that doesn't invite overcharges, and doesn't involve lying to people," said Timothy D. Hauser, the deputy assistant secretary for program operations of the Employee Benefits Security Administration, part of the Labor Department.

For Americans who choose to invest in annuities, the rules could save them about $32.5 billion over the next 10 years, according to the financial services firm Morningstar, which said insurance agent commissions would probably fall as a result.

Facing a significant change to their business model, many insurers and others in the financial industry have mounted a fresh political attack.

The lobbying group ACLI — whose board of directors includes executives from Prudential, Lincoln Financial and New York Life — argued in January that the government threatened to create an "impermissible barrier" between savers and advisers. That would reduce the availability of advice, the organization added, denying Americans "access to savings opportunities and retirement income solutions they want and need."

An allied industry group — the Federation of Americans for Consumer Choice, or FACC — argued that the rules would be "potentially devastating for the insurance industry," particularly because they could restrict agents' commissions. Kim O'Brien, the group's chief executive, said in an interview that the government had "never demonstrated" the marketplace today "has harmed any consumer."

Spokespeople for New York Life, Lincoln Financial, Northwestern Mutual and Prudential did not respond to requests for comment.

Many advocates representing retirees sharply contest the industry's arguments, stressing that average Americans should not be forced to choose between poor financial advice and no advice at all.

"What they're saying is, the only way they can operate is by giving you advice that is not in your best interest," said Bill Sweeney, the senior vice president for government affairs at AARP. "If they hung that on their shingle … no one would go to that financial adviser."

By May, the two lobbying groups representing the industry each sued the Labor Department in federal court, seeking to halt implementation of the rules and invalidate them entirely. Joining with insurance agents and brokerages, FACC faulted the government for racing to issue the regulations, even as it acknowledged the fight had been underway since 2016, when the industry successfully sued to quash a similar effort under President Barack Obama to overhaul investor protections.

Both federal judges ultimately sided with the industry. Jeremy D. Kernodle, the judge presiding over the lawsuit brought by FACC, pointed in his opinion to a recent Supreme Court ruling that sharply curtailed federal agency power in matters that Congress left ambiguous. Citing the end of that precedent, known as *Chevron* deference, he said the court "should no longer defer to an agency's interpretation of a statute."

The rulings came as insurance lobbyists forged ahead with a parallel campaign to rile opposition on Capitol Hill, where House Republicans in July took the first step toward using legislation to overturn the fiduciary rule.

Rep. Virginia Foxx (R-N.C.), who chairs the committee overseeing the Labor Department, charged that the federal protections would instead "eliminate options for working-class Americans, reduce their ability to retire and limit their access to financial advice."

House Republicans similarly tried to block the Biden administration from using federal funds to enforce the rule as part of a bill to fund the Labor Department in 2025. The Insured Retirement Institute, whose board of directors includes officials from UBS, Allianz, Fidelity and JPMorgan, lobbied heavily for the prohibition.

Paul Richman, who oversees government affairs for the group, argued that Americans could find it "impossible" to access retirement advice if more advisers were forced to adhere to a higher legal standard, according to an email obtained by The Washington Post.

The group declined to comment.