Consumer Federation of America

For Immediate Release
July 21, 2015

Contact: Barbara Roper, 719-543-9468
Micah Hauptman, 202-939-1004

CFA Applauds Department of Labor Proposal to Strengthen Protections for Retirement Savers, Rein in Harmful Industry Practices

Washington, D.C., July 21, 2015 -- In a comment letter filed today with the Department of Labor (DOL), the Consumer Federation of America (CFA) praised the agency for proposing a tough but flexible package of rules that would provide much needed new protections for retirement savers and do so in a way that enables well-meaning financial professionals operating under a variety of business models to comply.

"Working families and retirees trust and expect that the financial professionals they turn to for retirement investment advice will act in their best interests, but too often that trust is misplaced," said CFA Director of Investor Protection Barbara Roper. "Because of loopholes in the definition of fiduciary investment advice under ERISA, broker-dealers, insurance agents, and other sales-based 'advisers' are able to evade their fiduciary responsibilities to put the interests of their customer first. When they recommend high-cost, risky or otherwise inferior investments because they happen to be highly profitable for the seller, the retirement saver can end up paying a heavy price in the form of tens of thousands of dollars of lost retirement income."

The DOL rule proposal addresses this problem by closing loopholes in the definition of fiduciary investment advice while simultaneously providing relief that enables sales-based advisers to comply with their fiduciary obligations. The following are among the proposed rule's essential components:

- It adopts a functional definition of investment advice that ensures that all those who provide individualized, actionable investment recommendations to retirement plans, plan participants, or Individual Retirement Account (IRA) investors will be subject to a fiduciary duty under ERISA.

- It includes within the definition of investment advice recommendations regarding rollovers and benefit withdrawals, the most important financial decision many workers and retirees will face in their lifetime and an area of documented abuses.

- It provides an exemption for sales-based advisers that enables them to continue receiving commissions, 12b-1 fees, and other forms of conflicted compensation while holding them to a legally enforceable fiduciary duty to act in the best interests of their customers without regard to their own financial or other interests.

- It backs that best interest standard with a requirement that firms eliminate common industry practices that encourage and reward recommendations that are not in the best interest of their customers.

"As we document in our comment letter, conflicts of interest pervade the industry and taint the recommendations that retirement savers receive," said CFA Financial Services Counsel Micah Hauptman. "Contrary to industry claims, the costs of that conflicted advice are typically much higher than comparable services from non-conflicted, fiduciary advisers. The DOL proposal would preserve individuals' ability to pay for services through commissions and other such fees while ensuring for the first time that those who prefer to pay for advice in this manner don't have to give up their right to best interest recommendations."

CFA dismissed industry claims that the rule proposal would force sales-based advisers to abandon the market and cost small savers access to advice. "Industry groups, like SIFMA and FSI, aren't spending millions of dollars to kill this rule out of a concern for small savers. They are spending millions of dollars to kill this rule out a concern for the billions in excess profits they could lose if the rule is adopted," Roper said. "But those billions in excess profits come right out of the pockets of working families and retirees. While there may be minor operational issues with the rule proposal as currently drafted," she added, "we are confident that any such issues can and will be addressed before a rule is finalized. That is after all precisely what the comment process is for."

"Our retirement system works very, very well for the financial firms that are able to reap billions of dollars in profits from our tax-advantaged retirement accounts," Hauptman said. "The DOL rule proposal would help to ensure that it also works well for the millions of Americans who turn to financial professionals for retirement investment advice."

A copy of the CFA comment letter is available here: http://bit.ly/1SzS9BH

* * *

The Consumer Federation of America is a non-profit association of nearly 300 consumer groups that was established in 1968 to advance the consumer interest through research, advocacy, and education.