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PRESS RELEASE

Attorney General Frosh Opposes DOL Proposal Allowing Financial Advisors to Profit at Expense of Retirement Investors

BALTIMORE, MD (August 6, 2020) – Maryland Attorney General Brian E. Frosh today joined a coalition of nine attorneys general in opposing a proposed regulation by the U.S. Department of Labor (DOL) that would significantly weaken protections for workers who are saving for retirement. In a letter, the coalition urges DOL to withdraw its proposal, which condones dishonest business practices that harm the financial security of hardworking Americans, and instead focus on rules that truly protect retirement savers.

The DOL's actions include the reinstatement of a weak five-part test that allows most financial advisors to avoid fiduciary obligations and a proposal titled, "Improving Investment Advice for Workers and Retirees" that would create a new Prohibited Transaction Exemption (PTE), which allows even those few advisors who would otherwise have fiduciary obligations to profit at the expense of retirement investors.

"The DOL's proposed regulation will allow financial advisors to push their customers into unsuitable investments from which the advisors will reap commissions," said Attorney General Frosh. "The rule will create unnecessary risk for investors and relieve financial advisors of the consequences of providing poor financial guidance."

Many financial firms hold themselves out as trusted financial advisors to individual investors, when in fact, they are not. According to DOL's own research, conflicted fiduciary advice costs retirement investors tens of billions annually. Recognizing the need for fiduciary protections, Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA) that established essential protections for retirement savers. Since ERISA was enacted, the vast majority of retirement plans have shifted from professionally managed benefit plans to individually managed contribution plans, such as 401(k)s and IRAs. Navigating the financial marketplace can be difficult, and the stakes are large – which is why many seek honest, professional advice from fiduciaries.

In the letter, the coalition argues that DOL's proposal threatens the financial future of millions of Americans by reinstating an outdated five-part fiduciary test filled with loopholes that allow broker-dealers and insurance companies to avoid fiduciary requirements. Additionally, the coalition argues that the proposal would establish a new PTE that would allow fiduciaries to receive conflicted forms of compensation when providing advice to retirement investors so long as they abide by a so-called "best interest" standard. This standard is identical to the U.S.

Securities and Exchange Commission's weak Regulation Best Interest – a regulation that falls far short of the protections Congress intended when it passed ERISA to protect retirement investors. Furthermore, the coalition claims that DOL's 30-day comment period for its proposed regulatory package is too short to allow for meaningful comments and requests that it be extended to a 90-day comment period.

In submitting the letter, Attorney General Frosh is joined by the attorneys general of California, Connecticut, the District of Columbia, Illinois, Iowa, Minnesota, New York, and Oregon.