

**STATEMENT FOR THE RECORD**  
**On**  
**The U.S. House Committee on Education & the Workforce, Subcommittee on Workforce**  
**Protections**  
**“Examining Biden’s War on Independent Contractors”**  
**April 19, 2023**

The Financial Services Institute (FSI) represents independent financial services firms and the independent financial advisors affiliated with them. We are pleased that the Subcommittee is holding this hearing to explore the importance of independent contractors in the workforce. As discussed in further detail below, financial advisors’ independent contractor status is a defining characteristic of our industry. We therefore wish to register our substantial legal and policy concerns with and opposition to the Department of Labor’s proposal (Proposed Rule) to modify Wage and Hour Division regulations governing the analysis for determining whether a worker is an employee or an independent contractor under the Fair Labor Standards Act (FLSA).<sup>1</sup>

**Background on FSI Members**

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the United States, there are more than 500,000 independent contractors in the financial and insurance industries, including 160,000 independent financial advisors, who account for approximately 52.7 percent of all producing independent financial advisors.<sup>2</sup> These financial advisors are self-employed independent contractors, rather than employees of independent financial services firms.<sup>3</sup> They own and operate approximately 130,000 financial advisory and insurance brokerage firms, employing approximately 330,000 people and accounting for 27 percent (\$47 billion) of the output of the financial-advisory and insurance-brokerage industry. Between 2015 and 2019, independent contractors in the financial services sector created approximately 54,000 new businesses and 174,000 new jobs.<sup>4</sup>

FSI’s member independent financial services firms (most dually registered as broker-dealers and investment advisers) provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small business owners and job creators with strong

---

<sup>1</sup> Employee or Independent Contractor Classification Under the Fair Labor Standards Act, 87 Fed. Reg. 62,218.

<sup>2</sup> Cerulli Associates, Advisor Headcount 2019, on file with author; NERA Economic Consulting, The Role of Independent Contractors in the Finance and Insurance Sectors (Nov. 2022), attached *infra* as Ex. B (finding that more than half a million people work as independent contractors in the financial and insurance sector and in financial-services occupations).

<sup>3</sup> The use of the term “financial advisor” or “advisor” in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant. The use of the term “investment advisor” or “advisor” in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

<sup>4</sup> NERA Economic Consulting, The Role of Independent Contractors in the Finance and Insurance Sectors, *infra* Ex. B.

ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring.

FSI's members serve ordinary Americans across all income levels. Independent financial services firms enable independent financial advisors to provide financial advice that helps the advisors' clients save for common financial needs such as college tuition, homeownership, retirement, and support for their aging parents. These advisors' services are especially important in underserved minority and rural communities that lack access to a robust financial-services market, because they frequently offer a one-stop shop for affordable investing advice, tax preparation, financial education, and estate planning.

Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals. The business model has two players: financial advisors and independent financial services firms. Financial advisors normally establish their own business without any coordination with or approval required by the firm. Some advisors engage in limited operations, such as purchasing and selling securities on behalf of clients. Others may have a more significant enterprise, offering a full range of financial planning, investment advice, insurance, tax, and estate-planning services.

Financial advisors affiliate with independent financial services firms in order to take advantage of economies of scale and to ensure regulatory compliance. The firms offer financial advisors business services like platforms and products. They also help individual advisors comply with federal and state regulations. In particular, under the Securities Exchange Act of 1934 (Exchange Act), anyone who effectuates securities transactions or offers advice concerning investing in securities, including independent financial advisors, must register with the SEC or affiliate with a corporation that is registered with the SEC, such as an independent financial services firm. 15 U.S.C. § 78o(a)(1). Federal regulations also require registered investment advisors to implement written policies and procedures designed to prevent violations of the federal securities laws. 17 C.F.R. § 270.38a-1. Individual advisors who choose to satisfy these requirements by affiliating with a corporation do not individually register as broker-dealers but instead agree to supervision by their firms, which assume responsibility for ensuring compliance with applicable laws. *Id.*; FINRA Rule 3110. The firms thus oversee the securities operations of their financial advisors, including by establishing written procedures (as required by law) to ensure compliance with federal law and the conduct rules of the Financial Industry Regulatory Authority, Inc. (FINRA).

Critically, *financial advisors are not employees of independent financial services firms*. The industry's business model is successful because the key relationship is the one between a client and his or her financial advisor—not the separate, symbiotic relationship between the financial advisor and his or her affiliated independent financial service firm. Thus, the focal point of a financial advisor's business is his or her interactions with clients. Financial advisors frequently switch their firm affiliations, taking their clients and preexisting businesses with them. The firms do not control

financial advisors, who set their own hours and rates, maintain their own physical premises, and hire and supervise their own staff. Financial advisors make significant investments in their own businesses and realize profits or losses according to their own successes or failures. They generally operate their business free from the control of the firms except for purposes of compliance with federal and state rules and regulations. Many financial advisors also offer clients services wholly unrelated to their firm affiliation, like tax advice and estate planning.

Thus, financial advisors are independent contractors operating with a significant degree of independence, while complying with certain contractual obligations such as legally required regulatory compliance measures. These advisors are therefore not correctly classified as employees for FLSA purposes. Rather, they are independent contractors and businesspeople.

### **Discussion**

The DOL published a request for public comment on its Proposed Rule. FSI submitted comments on the Proposed Rule on December 13, 2022,<sup>5</sup> the date on which the comment period closed. As discussed in those comments, we believe that the DOL should not finalize its proposal to rescind its 2021 Rule.<sup>6</sup> By hastily jettisoning the clarifying “core factors” framework of the existing regulations—adopted less than two years ago in DOL’s comprehensive rulemaking on this same topic—the Proposed Rule would undermine its own stated objective of regulatory clarity. It would also contravene the Administrative Procedure Act (APA), the FLSA, and Supreme Court precedent.

DOL also should not finalize its proposal to adopt a new, totality-of-the-circumstances test for FLSA worker classification. That novel test would be independently unlawful, unpredictable, and inappropriately slanted toward employee classification across the board. Among other missteps, the new test improperly expands the critical “control” factor to count regulatory compliance requirements such as those imposed by federal and state governments—not by the employer—even though these requirements have nothing to do with economic dependence and are not probative of independent contractor status. And it improperly refuses to consider the “integrated unit of production” factor required by Supreme Court precedent, substituting instead an unhelpful and irrelevant inquiry into whether a worker is “integral” or important to a business.

DOL’s cost-benefit analysis in support of the Proposed Rule is also fatally flawed. It neglects major categories of costs, deviates without explanation from the cost analysis in the 2021 Rule, and significantly underestimates the costs that the Proposed Rule would impose if adopted. Of particular concern to FSI, the Proposed Rule would create significant uncertainty—and, therefore, costs—for independent financial advisors and the independent financial services firms with which they affiliate, which in turn would reduce the availability of high-quality investment advice and other financial, tax, and estate-planning services for underserved communities,

---

<sup>5</sup> Financial Services Institute, Comment Letter on Employee or Independent Contractor Classification Under the Fair Labor Standards Act (December 13, 2022) available at: <https://www.regulations.gov/comment/WHD-2022-0003-53818>

<sup>6</sup> Independent Contractor Status Under the Fair Labor Standards Act, 86 Fed. Reg. 1168 (Jan. 7, 2021).

including minority and rural communities.

Unfortunately, the 61-day comment period provided by the DOL did not allow commenters sufficient time to provide a meaningful analysis of the Proposed Rule's economic impact. Nevertheless, FSI commissioned the attached report demonstrating the economic impact of the Proposed Rule on its members, the independent financial services industry, and the Main Street American investors they serve. Overall, the study found that the DOL's proposal would result in significant disruption if implemented. Significant findings include:

- Up to 20% of advisors would retire rather than be reclassified as employees. As a result, a significant number of Main Street investors would lose access to a trusted financial advisor.
- 78% of advisors expect account minimums to increase, restricting their ability to serve smaller accounts. This would be a particularly harmful outcome for less affluent investors, including younger individuals, minority households and those in rural areas.
- 77% of advisors expect commissions and management fees to increase.
- Almost half (47%) of financial advisors reported that they believed the number and kind of investment products they could offer investors would decline.
- Financial advisors estimate that 31% of existing clients could no longer be served because of increased account minimums or fees.

Moreover, independent firms that have developed business models based on current and longstanding rules would face higher costs, as would their affiliated advisors – who freely choose and prize their independence.

For all these reasons, FSI urges DOL to withdraw the Proposed Rule and to adhere to the stable, lawful framework of its existing regulations. Further, the DOL's Unified Regulatory Agenda lists the final rule to be issued in May 2023,<sup>7</sup> which is five months after the Proposed Rule's comment period closed. According to the Rulemaking Docket, the DOL received over 54 thousand comments on the Proposed Rule.<sup>8</sup> Five months does not seem a sufficient amount of time to review, analyze, and address the volume of comments in order to meet that deadline. It might appear to an outside observer that the DOL had a predetermined outcome in mind when it published the Proposed Rule.

### **Conclusion**

We thank the Subcommittee for holding this hearing and for the work it is doing to preserve independent contractor status in the workforce. Should you have any questions or would like more information on FSI and our position on this important issue, please contact our Director of Legislative Affairs, Hanna Laver, at (202) 499-7224.

---

<sup>7</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=1235-AA43>

<sup>8</sup> <https://www.regulations.gov/docket/WHD-2022-0003>

# **THE DOL'S INDEPENDENT CONTRACTOR CLASSIFICATION RULE WOULD DECREASE ACCESS TO ADVICE AND INCREASE COSTS FOR INVESTORS**

**A REPORT FOR THE FINANCIAL SERVICES  
INSTITUTE**

**JANUARY 2023**

## **ABOUT OXFORD ECONOMICS**

Oxford Economics was founded in 1981 as a commercial venture with Oxford University's business college to provide economic forecasting and modelling to UK companies and financial institutions expanding abroad. Since then, we have become one of the world's foremost independent global advisory firms, providing reports, forecasts and analytical tools on more than 200 countries, 100 industries, and 8,000 cities and regions. Our best-in-class global economic and industry models and analytical tools give us an unparalleled ability to forecast external market trends and assess their economic, social and business impact.

Headquartered in Oxford, England, with regional centers in New York, London, Frankfurt, and Singapore, Oxford Economics has offices across the globe in Belfast, Boston, Cape Town, Chicago, Dubai, Dublin, Hong Kong, Los Angeles, Mexico City, Milan, Paris, Philadelphia, Stockholm, Sydney, Tokyo, and Toronto. We employ 450 staff, including more than 300 professional economists, industry experts, and business editors—one of the largest teams of macroeconomists and thought leadership specialists. Our global team is highly skilled in a full range of research techniques and thought leadership capabilities from econometric modelling, scenario framing, and economic impact analysis to market surveys, case studies, expert panels, and web analytics.

Oxford Economics is a key adviser to corporate, financial and government decision-makers and thought leaders. Our worldwide client base now comprises over 2,000 international organizations, including leading multinational companies and financial institutions; key government bodies and trade associations; and top universities, consultancies, and think tanks.

## **FINANCIAL SERVICES INSTITUTE**

The Financial Services Institute (FSI) is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education, and public awareness, FSI has successfully promoted a more responsible regulatory environment for 85 independent financial services firm members and their 160,000+ affiliated financial advisors—which comprise over 52% of all producing registered representatives. FSI effects change through constructive engagement in the regulatory and legislative processes, working to create a healthier regulatory environment for its members so they can provide affordable, objective advice to hard-working Main Street Americans. For more information, please visit [financialservices.org](https://financialservices.org).

---

### **January 2023**

All data shown in tables and charts is Oxford Economics' own data, except where otherwise stated and cited in footnotes.

All information in this report is copyright © Oxford Economics Ltd.

**This report is confidential to FSI and may not be published or distributed without their prior written permission.**

The modeling and results presented here are based on information provided by third parties, upon which Oxford Economics has relied in producing its report and forecasts in good faith. Any subsequent revision or update of those data will affect the assessments and projections shown.

# TABLE OF CONTENTS

Executive summary .....	4
1. Introduction .....	6
1.1 Context of the proposed rule change .....	6
1.2 Independent financial services firms make a significant contribution to the US economy .....	7
2. The proposed rule will likely bring about significant industry disruption .....	9
2.1 Financial advisors value their independence .....	9
3. Potential significant costs to financial services firms and financial advisors ..	14
3.1 Costs of misclassifying financial advisors as employees .....	14
3.2 FSI member firms fear the rule will bring harm to their businesses .....	14
3.3 Substantial costs of legal advice for independent financial services firms and advisors .....	15
3.4 Costs of starting an RIA .....	15
3.5 Costs of onboarding IC advisors re-classified as employees .....	16
3.6 Record-keeping costs .....	16
4. Impacts on consumers.....	17
4.1 Reduced access to financial advice and higher costs .....	17
4.2 Potential reduction in choice of investment products .....	20
5. Conclusion .....	22
Appendix: Methodology .....	23



## EXECUTIVE SUMMARY

Independent financial services firms and affiliated financial advisors generate significant value for the economy, contributing to economic growth and tax revenues and supporting hundreds of thousands of jobs. Member firms of the Financial Services Institute (FSI) work with a network of 160,000 affiliated financial advisors,<sup>1</sup> almost all of whom choose to work as independent contractors. These independent advisors provide access to the financial markets and investment advice to Main Street investors across the country.

The Department of Labor has proposed a new rule on Employee or Independent Contractor (IC) Classification Under the Fair Labor Standards Act. The proposed rule would “rescind the 2021 IC rule and replace it with detailed regulations addressing the multifactor economic reality test...”<sup>2</sup>

The FSI, the member organization for independent financial service firms and independent financial advisors, commissioned Oxford Economics to interview and survey its members regarding the potential impact of the proposed rulemaking. In this report, we describe the potential resulting costs imposed on firms, the likely disruption to independent financial services firms, and how these changes will harm independent financial advisors and investors who rely on these firms for services and financial guidance.

**The survey responses and interviews indicate that the rule may result in industry disruption, significant costs, and potential harm to investors.** The impact will not only be on independent financial services firms that have developed business models reliant on existing rules, but also on financial advisors who enjoy their independence, and Main Street investors served by independent financial advisors.

We document the following impacts:

- An overwhelming majority of independent financial advisors would want to remain independent, and not move into W-2 employee status, and would contemplate steps such as forming their own registered investment adviser firm to retain their independent contractor status.

---

<sup>1</sup> “Financial advisor” or “advisor” refers to an individual who is a dually registered representative of a broker-dealer and an investment adviser representative of a registered investment adviser firm. The use of the term “investment adviser” or “advisor” is a reference to a firm or individual registered with the Securities and Exchange Commission or state securities division as an investment adviser.

<sup>2</sup> Employee or Independent Contractor Classification Under the Fair Labor Standards Act, 87 Fed. Reg. 62,218

- The potential retirement of up to a fifth of independent financial advisors, were they re-classified as employees.
- Substantial costs to financial advisors and financial services firms from a shift to employment status.
- Reduced access to investment advice, fewer product and service provider choices, and higher costs for Main Street investors.

## 1. INTRODUCTION

The Financial Services Institute (FSI), the member organization for independent financial services firms and independent financial advisors, commissioned Oxford Economics to interview and survey its members regarding the potential impact of the Department of Labor's (DOL) proposed rulemaking on Employee or Independent Contractor Classification Under the Fair Labor Standards Act. To this end, Oxford Economics interviewed executives from independent financial services firms and financial advisors, and surveyed both groups.

### 1.1 CONTEXT OF THE PROPOSED RULE CHANGE

FSI member firms work with a network of 160,000 affiliated financial advisors, providing advisory services to Main Street investors across the country. Generally, these financial advisors choose to work as independent contractors (IC), retaining 90% or more of the revenue they generate, but must affiliate with financial services firms for assistance with compliance functions amongst other factors.

The DOL has proposed a new rule on Employee or Independent Contractor Classification Under the Fair Labor Standards Act which rescinds the 2021 IC rule and replaces it with a new multifactor economic reality test.<sup>3</sup>

Interviews with FSI members and financial advisors revealed that they expect the new rule to cause significant industry disruption and create a great deal of confusion and uncertainty about independent contractor classification. We set out the potential for disruption, and the associated costs to independent financial services firms, financial advisors, and end consumers ("investors") below.

Information included in this study came primarily from FSI member financial advisors and financial services firms. Our analysis is based on a detailed survey sent to financial advisors (614 responses) and independent financial services firms (14 responses, or 17% of FSI member firms), and in-depth interviews with a set of three independent financial services firms and three independent financial advisors. We then draw in comprehensive US and state-level data on the independent financial advisor market<sup>4</sup> to provide insights into the potential outcomes of the rule across the US. Based on the potential outcomes, key implications and conclusions can be drawn, reflecting the likely harm the proposed rule would cause within the financial advisory sector, as well as to the consumers who benefit from receiving financial

---

<sup>3</sup> Employee or Independent Contractor Classification Under the Fair Labor Standards Act, 87 Fed. Reg. 62,218

<sup>4</sup> Oxford Economics, 2020, *The Economic Impact of FSI Members*, <https://financialservices.org/economicimpact/>

advisory services. In the appendix, we have described our methodology in more detail.

## **1.2 INDEPENDENT FINANCIAL SERVICES FIRMS MAKE A SIGNIFICANT CONTRIBUTION TO THE US ECONOMY**

The business model of independent financial services firm is based on finding and empowering affiliated financial advisors who want to own their own business, work their own hours, and serve the clients and community they choose. In our 2016 impact report we found that FSI member-affiliated financial advisors “tend to operate as storefront businesses on the main streets of small to mid-sized cities in the United States, seeking to provide affordable, accessible, unbiased advice”.<sup>5</sup> The study also found that FSI members made a disproportionate impact in small and mid-sized states, and were active community members nationwide.<sup>6</sup>

The provision of these services to investors across the US, in turn, generates a significant amount of economic activity. In our December 2020 update of our original 2016 study,<sup>7</sup> we enumerated some of those benefits provided by FSI members. The FSI represents 85 independent financial services firms, and across those firms there are 160,000 affiliated financial advisors engaged in the sale of various financial products such as mutual funds, exchange traded funds (ETFs), and variable life insurance and annuity products. In total, we estimated a total footprint of 408,000 total jobs, and a contribution of FSI member activity of \$35.7 billion to US GDP (generating \$7.2 billion in federal, state, and local taxes). In short, FSI member financial services firms generate considerable value for investors as well as to the US economy more broadly.

This report evaluates the potential industry disruption to financial advisors and financial services firms by evaluating the risks and costs associated with the proposed DOL Rule. Since the precise impacts of the proposed rule are not fully understood at this point, the analysis must be understood as suggestive.

The report is divided into the following sections:

- Chapter 2—Industry Disruption. Examines how financial advisors and independent financial services firms report they might respond to potential

---

<sup>5</sup> Oxford Economics, 2016, *The Economic Impact of FSI's Members*, <https://www.oxfordeconomics.com/resource/the-economic-impact-of-fsi-s-members/>

<sup>6</sup> *Ibid.* page 6

<sup>7</sup> Oxford Economics, 2020, *The Economic Impact of FSI Members*, <https://financialservices.org/economicimpact/>

changes in employment status and finds that the rule may result in significant disruption to industry stakeholders.

- Chapter 3—Cost Estimates. Provides preliminary estimates of costs associated with responding to the rule.
- Chapter 4—Impacts on end customers. Focuses on potential negative impacts for investors.
- Chapter 5—Concluding remarks.
- Appendix—Provides more detail about our methodology in completing this survey and interviews underpinning our analysis.

## 2. THE PROPOSED RULE WILL LIKELY BRING ABOUT SIGNIFICANT INDUSTRY DISRUPTION

The overwhelming view from our interviewees and from the respondents to our surveys was that the proposed rule will likely bring about significant disruption. Financial advisors value their independence and would take steps to maintain that status.

### 2.1 FINANCIAL ADVISORS VALUE THEIR INDEPENDENCE

We reviewed a June 2022 US Financial Advisor Satisfaction Study conducted by JD Power of around 1,500 employee and independent contractor advisors on their overall levels of satisfaction. Independent contractor financial advisors reported levels of satisfaction 5% higher than employee advisors, and were 45% more likely to recommend that financial services firm to a colleague than were employee advisors. Specifically, the measured Net Promoter Score of employees was 31, whereas that for independent advisors was 45.<sup>8</sup>

Independent contractor financial advisors also reported greater satisfaction than employees along the following dimensions—3% higher satisfaction with their compensation, 5% higher satisfaction with leadership and culture, 7% higher satisfaction with operational support, 4% higher satisfaction with technology, 9% higher satisfaction with products and marketing, and 4% higher satisfaction with professional development.<sup>9</sup> There were **no** dimensions on which employee financial advisors reported greater satisfaction than independent financial advisors.

#### 2.1.1 The current industry structure already allows for advisors who want to be employees

The industry is characterized by a robust ecosystem of various business models, with different broker-dealers operating each model. There are broker-dealers who only employ financial advisors directly; others operate both models (hiring advisors as employees, while also having affiliated independent financial advisor

---

<sup>8</sup> The Net Promoter Score is a commonly used metric in marketing measuring the likelihood a customer would recommend a product to a friend. It is calculated by subtracting “detractors” from “promoters” as captured by the answer to the question “How likely is it that you would recommend the [product/service/company] to a friend”. For example, if 50% of your customers are promoters, 27% detractors, and 30% neutral, your NPS would be 23% or “23”.

<sup>9</sup> *Wealth Management Firms Need Advisors as Brand Evangelists to Attract New Talent, J.D. Power Finds* (July 6, 2022), <https://www.jdpower.com/business/press-releases/2022-us-financial-advisor-satisfaction-study>.

relationships); and finally there are those independent broker-dealers who specialize in providing services to networks of affiliated independent financial advisors. This variety may allow for a better matching of individuals into firms that suit their preferred ways of working.

Thus many financial advisors can and do work as employees at the large wirehouses,<sup>10</sup> as well as at other broker-dealers and investment advisory firms, where they sell commissioned products and provide advisory services. On the other hand, the choice of many financial advisors to affiliate with FSI member financial services firms indicates their underlying preference to work as independent contractors.<sup>11</sup> The labor market matches people into the sorts of roles they prefer, and the Net Promoter Score (NPS) measures for both employee and independent contractor financial advisors are strong.<sup>12</sup> There is the possibility that there are *too few* independent contractor advisors, if anything, since this group has a 50% higher reported NPS, suggesting the possibility of frictions keeping too many advisors in employee roles. This might include the potential loss of clients during transition from their employer, concerns around managing their own business, and general risk aversion.

In our interviews we heard a number of reports of independent financial advisors starting their careers at the large wirehouse firms, building up a book of businesses and set of clients, and then transitioning to being an independent advisor affiliated with an independent financial services firm in order to run their own businesses or have more flexibility. The reasons for choosing independence include better economics and greater autonomy. Financial advisors report that the independent model allows them to retain a larger share of their revenues. Independent financial advisors also appreciate the opportunity to establish their own account minimums

---

<sup>10</sup> "Wirehouse" refers to the four national "mega-firm" full-service brokerages providing services including research, advice, tax planning, retirement planning, etc. These are: Morgan Stanley, Merrill Lynch, UBS, and Wells Fargo. See e.g., Diamond, M., "Is Your Financial Advisor Independent, An RIA Or Wirehouse Rep? You Have No Idea But You Should," *Forbes*, August 1, 2012.

<sup>11</sup> Economists refer to preferences expressed through choices as "revealed preference". For a discussion of revealed preference for independent contractor work and related survey evidence, see NERA Economic Consulting, *The Role of Independent Contractors in the Finance and Insurance Sectors*, at pp.6-8 "the 2017 CWS survey found that 79 percent of respondents preferred being an independent contractor to working as a traditional employee, whereas only nine percent would have preferred to be a traditional employee."

<sup>12</sup> *Wealth Management Firms Need Advisors as Brand Evangelists to Attract New Talent, J.D. Power Finds* (July 6, 2022), <https://www.jdpower.com/business/press-releases/2022-us-financial-advisor-satisfaction-study>. It is noteworthy here that the employees would still recommend their employer to a friend, but independent advisor recommendations of independent financial services firms were significantly higher.

**11%**

of financial advisors' income  
was not from commissions or  
advisory fees.

*Additional income was from  
financial planning fees and  
insurance commissions.*

and select from a wider array of product options rather than a proprietary product list.

### **2.1.2 Many financial advisors want to own their own business, as it provides flexibility and the ability to best serve their clients**

Our survey of financial advisors confirmed our understanding of why advisors are choosing independence. Advisors want to own their own business, and to choose their own clients and work schedules and believe that independent-contractor status allows them to better serve their clients.

Specifically, as Fig. 1 shows, 39% of advisors ranked "the ability to own my own business" highest among the benefits of independence, followed by "ability to serve my clients better" (34%). Another 14% ranked "freedom of choosing working hours and schedule" highest. Another important factor was "flexibility of serving the clients I want to work with", which ranked just behind owning their own business and serving clients better overall.

Secondly, the flexibility of independence and running their own business provide financial advisors with the opportunity to earn substantial income from sources other than advisory fees and commissions. Around a third of financial advisor survey respondents reported earning financial planning fees, and more than two thirds earned insurance commissions. In sum, among respondents around 11% of income is earned outside of commissions or advisory fees including through financial planning fees (including things like estate planning) and insurance commissions.



**Fig. 1. The main benefit of being an independent contractor**



Source: Oxford Economics

### 2.1.3 Most financial advisors would not choose to become employees at financial services firms

We asked interviewees and survey respondents how they expected financial advisors to react, were it determined that they should be classified as employees. The consistent response we heard in interviews, and which is apparent in the survey data, is that most advisors prefer independent status.

19%

of surveyed financial advisors would choose retirement if required to become employees of their broker-dealer or investment adviser firm

Specifically, advisors were asked: "If DOL enacts the rule and affiliated financial advisors are required to become employees of their broker-dealer or investment adviser firm, what is your likely response to the change in employment status?" In response, 58% said they would start or focus on their registered investment adviser (RIA) business, 19% said they would choose retirement, and only 11% said they would choose to become an employee of their broker-dealer affiliate (Fig. 2). Advisors also offered additional thoughts in an open-ended text box, with a large number indicating that they were unsure on what they would do, and others suggesting they would seek an alternative career.

**Fig. 2. Financial advisors' response to the change in employment status**

Responses	Percent of respondents
Start or focus on your own registered investment advisor (RIA) business	58.0%
Choose retirement	19.3%
Choose to become an employee of your broker-dealer affiliate	10.7%
Form your own broker-dealer	0.5%
Other	11.6%

We heard corroborating predictions in our interviews with financial services firms. In their survey responses, executives at independent financial services firms made similar estimates. They estimated about 34% of advisors would choose to become employees of their firm, 46% would stop offering broker-dealer services and only provide registered investor advisor services, and 13% would retire.

### **3. POTENTIAL SIGNIFICANT COSTS TO FINANCIAL SERVICES FIRMS AND FINANCIAL ADVISORS**

The rule threatens to impose a number of potential costs that need to be accounted for, although the precise magnitude of these costs remains uncertain at this time.

#### **3.1 COSTS OF MISCLASSIFYING FINANCIAL ADVISORS AS EMPLOYEES**

There is a risk that the proposed rule will result in independent financial advisors being improperly classified as employees, which adds to overall uncertainty within the industry around the potential for employee misclassification. This would have costs. In the first instance, this is in the form of onboarding costs as set out in section 3.5 below. Second, and more significantly, there is harm to independent financial advisors who prefer, and choose, to be independent.

In addition, misclassification would also result in substantial costs not just for financial advisors, but also for financial services firms who may incur costs (beyond onboarding) such as legal expenses.

#### **3.2 FSI MEMBER FIRMS FEAR THE RULE WILL BRING HARM TO THEIR BUSINESSES**

In our interviews, we heard that there may be considerable impact on several financial services firms. Interviewees expressed concern over the range of additional costs they would face, including additional legal expenses and large increases in HR staff and expense.

More fundamentally, interviewees noted the challenge posed to the independent financial services firm business model in a context where the number of advisors with W-2 employment status at large wirehouses has been relatively shrinking. At least one interviewee noted how the growing share of millennial customers prefer an independent financial advisor, as a potential reason for this broader trend.

In the survey responses, six financial services firms indicated that the added uncertainty might result in them reducing capital investments over the next year in their platforms serving independent contractor affiliated financial advisors.

# 24%

of surveyed financial advisors anticipated needing legal advice

### 3.3 SUBSTANTIAL COSTS OF LEGAL ADVICE FOR INDEPENDENT FINANCIAL SERVICES FIRMS AND ADVISORS

In the near term, the added uncertainty generated by a potential rule change will lead to a greater demand from financial advisors for legal advice. Almost a quarter (24%) of surveyed financial advisors responded that they anticipated needing to retain outside counsel in light of the DOL rule. Only 10% indicated they did not anticipate the need for legal advice to understand the impact of the proposed rule on their business. The average anticipated cost of those legal services was approximately \$20,000.

In addition, independent financial services firms also anticipate legal costs associated with interpreting the proposed rule and applying it to their business operations. Half of the survey respondents anticipated needing to retain outside counsel in light of the rule, with an average anticipated legal cost in excess of \$100,000.

### 3.4 COSTS OF STARTING AN RIA

Both financial advisors and financial services firms reported that they expected financial advisors to start or scale up their own registered investment adviser (RIA) business, in response to a determination that advisors were employees. RIAs offer advice for a fee and are not paid on a commission basis. Since compensation is typically a percentage of assets under management, the incentives for RIAs are to concentrate their efforts on wealthier clients with larger AUMs and forgo smaller accounts (as well as retirement products such as annuities that are typically sold on a commission basis). As we have noted elsewhere, commission-based accounts are more appropriate for accounts with limited trading activity, and smaller accounts, since low account balances do not support the fixed costs of active management services.<sup>13</sup>

Beyond this point, the costs associated with forming an RIA are significant and include legal and compliance fees, marketing and branding costs, trading platform costs, other technology costs, and costs associated with staffing and sales. We heard a wide variety of estimates associated with each of these cost categories, we expect in part because the size of an individual advisor's own business might vary quite considerably in terms of assets under management and employees. Of the



*Start-up costs are significant and include legal and compliance fees, marketing and branding costs, trading platform costs, and costs associated with staffing and sales*



<sup>13</sup> Oxford Economics, 2015, "The economic consequences of the US Department of Labor's proposed new fiduciary standard," August. Available at <https://www.oxfordeconomics.com/resource/the-economic-consequences-of-the-us-department-of-labor-s-proposed-new-fiduciary-standard/>

270 financial advisor respondents who provided estimated average costs of starting their own RIA, the average total costs they expected were- around \$200,000 (with median expected costs around \$150,000) summing across these cost categories.

### 3.5 COSTS OF ONBOARDING IC ADVISORS RE-CLASSIFIED AS EMPLOYEES

**\$11,000**

An estimated average cost of onboarding per employee.

Includes HR time and training, travel, background checks, FINRA registration, hardware/technology, and management time.

There also would be costs associated with onboarding independent contractor (IC) financial advisors if it were determined they are employees. Interviewees identified the following categories of cost: HR time and training; travel; background checks; FINRA registration; hardware/technology; and management time spent (including training). Across the financial services firms that offered estimates (in interviews or in the survey), the average per employee costs was around \$11,000. Additional per employee costs not included above are third party recruiting costs and relocation expenses which might sum to an additional \$40,000 to \$50,000 per employee, according to interviewees.

### 3.6 RECORD-KEEPING COSTS

Financial services firms were also asked what they estimated their total annual costs would be on keeping additional employment records for affiliated financial advisors such as information about daily and weekly hours worked, wages paid, etc. Across the nine survey participants who responded to this question, the average annual cost was estimated at around \$300,000 for each firm (or around \$100 per advisor per year).<sup>14</sup>

---

<sup>14</sup> These estimates are broadly consistent with other available estimates of time and attendance software costs. For example, "cloud-hosted time and attendance systems typically cost \$2 to \$10 per employee per month, and on-premise systems cost \$100 to \$400 per license." Given the distributed nature of financial advisors (not located in a single location), it is likely that cloud solutions would be required. See *Business News Daily* "The Best Time and Attendance Software of 2023," <https://www.businessnewsdaily.com/6730-best-time-and-attendance-systems.html>

## 4. IMPACTS ON CONSUMERS

As described above, the DOL's proposed rule would impose significant costs on independent financial advisors and financial services firms. Interviews and survey responses suggest that ultimately a large share of these costs will be borne by the end consumers of these services, that is, investors. In addition, investors will also experience a reduction in access to financial advice, through retirements.

### 4.1 REDUCED ACCESS TO FINANCIAL ADVICE AND HIGHER COSTS

Survey respondents, including both financial advisors and financial services firms, indicate that the impact of this rule may be many retirements, particularly among financial advisors who do not want to be in employee status.

#### 4.1.1 Retirements and job losses

Specifically financial advisors were asked: "If DOL enacts the rule and affiliated financial advisors are required to become employees of their broker-dealer or investment adviser firm, what is your likely response to the change in employment status?" Almost a fifth (19%) of respondents reported that they would retire. Independent financial services firms were asked a similar question ("In your best estimate, if required to become employees, what share of your affiliated representatives who are currently independent contractors would choose retirement"). Across this group, the estimated average of their affiliated financial advisors who would choose retirement was 13%. These retirements would likely have significant impacts on the communities where those advisors operate.<sup>15</sup>

Fig. 3 below, leveraging data from our December 2020 report,<sup>16</sup> illustrates the total number of FSI member job losses because of retirements (assuming a 20% retirement rate), where the size of the red circle corresponds to the raw number of FSI member job losses.<sup>17</sup> Graphed also are FSI member jobs as a proportion of industry total (blue shading) and the states where household income is below the national average (cross hatching). Disruptions to the independent financial services

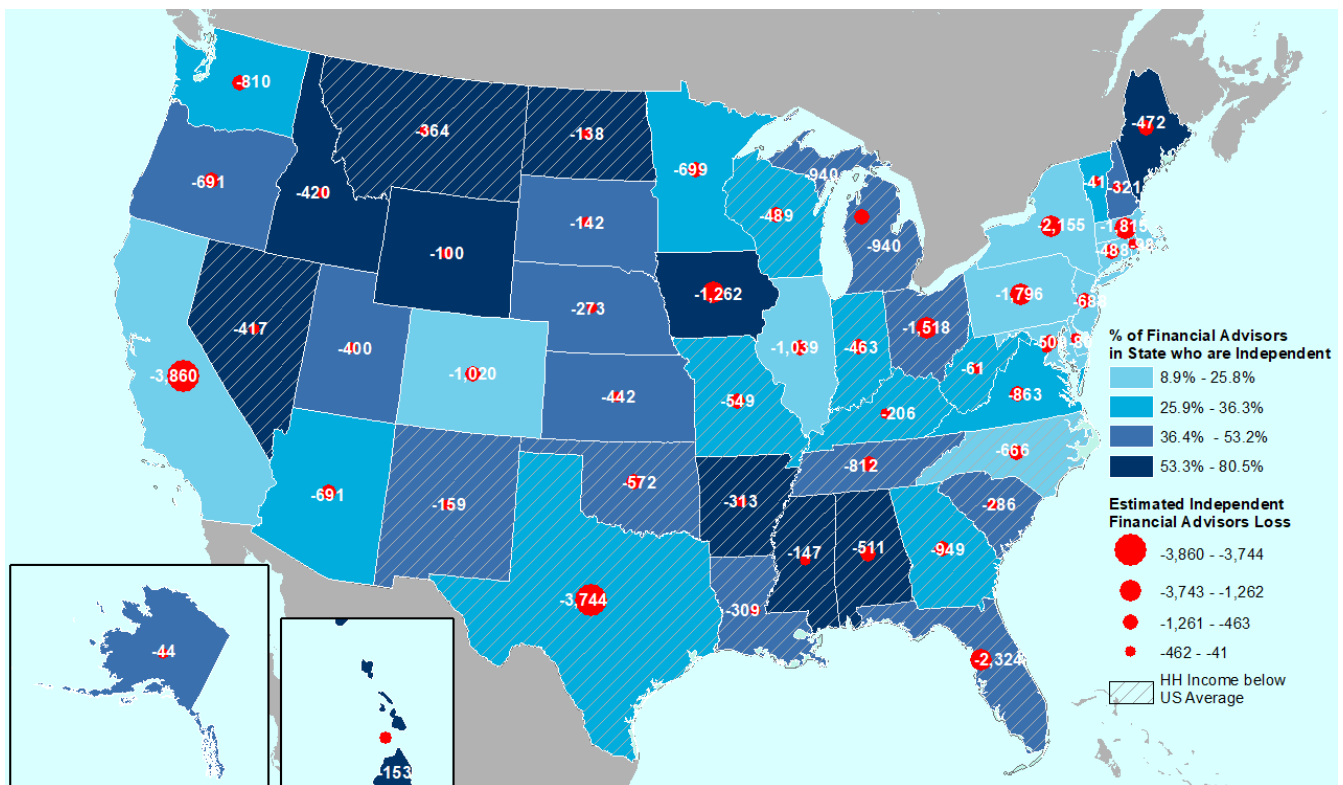
<sup>15</sup> In our 2020 economic impact report we showed how each FSI member supports 1.2 additional jobs throughout the broader economy. Thus if 10% to 20% of these jobs are lost through retirement (16,000 to 32,000 jobs) that could mean an additional 19,200 to 38,400 job losses in the broader economy, above the retirements. See Oxford Economics, 2020, *The Economic Impact of FSI Members*, <https://financialservices.org/economicimpact/>

<sup>16</sup> Oxford Economics, 2020, *The Economic Impact of FSI Members*, <https://financialservices.org/economicimpact/>

<sup>17</sup> Note this considers only the comparative statics of retirement job losses, ignoring numerous other impacts such as increased RIA business focus, or dynamic changes.

firm model would naturally have greatest impact both where the absolute number of FSI member firms' jobs is high (red circle), and where there are high proportions of FSI member jobs as a share of the industry (blue shading). As we have set out in our 2020 impact report, FSI member jobs support 1.2 additional jobs through the broader economy, and have significant economic impact, so some of the job losses may be particularly felt in lower-than-average household income states. Furthermore, as we discuss further below, investors in those states may disproportionately be impacted by increased fees and higher account minimums (that is, advisors would increase minimum dollar value for opening an account).

**Fig. 3. Jobs impact of a 20% retirement of financial advisors**



#### 4.1.2 Impacts on investors

A 10% to 20% reduction in the supply of financial advisors is a significant amount. In addition, the costs to financial advisors and independent financial services firms set out in Chapter 3 above, are potentially significant. The impacts of these factors are likely to be passed on to consumers, given relatively narrow profit margins.

This is consistent with interviewees, who said they expected account minimums to increase,<sup>18</sup> and an increase in commissions and management fees. It was reported that one consequence of the DOL rule would be that the economics of managing small accounts was going to cause these investors to lose access to financial planning services. Through overall attrition the number of smaller accounts served will decrease, disproportionately hurting those with lower wealth levels, including younger, minority households and those in rural areas.

These interview reports were corroborated by our survey of financial advisors who were asked to select all changes that “would likely be implemented to [their] customers”. As Fig. 4 shows, four out of five (78%) predicted an increase in account minimums, 77% an increase in fees, 64% a reduction in service/access, and 59% a reduction in customers/investors. When asked to estimate “what percentage of existing clients would no longer be served because of increase in account minimums or increase in fees”, the average across 539 financial advisor responses was 31%, which represents a significant impact on access to financial services. If we assume that a typical advisor has 100 clients,<sup>19</sup> the estimated number of clients impacted across the 160,000 independent financial advisors would be around 5 million.

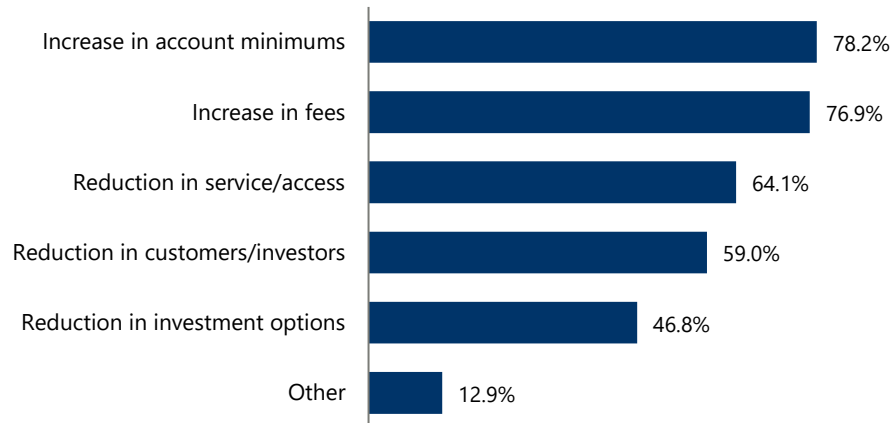
---

<sup>18</sup> We have previously noted that independent broker dealers “disproportionately serve small retail investors, with lower or no account minimums.” See Oxford Economics, 2015, *Economic consequences of the US Department of Labor’s proposed new fiduciary standard*. Report produced for the Financial Services Institute. <https://www.oxfordeconomics.com/resource/the-economic-consequences-of-the-us-department-of-labor-s-proposed-new-fiduciary-standard/>

<sup>19</sup> See e.g. Kitces, M., “How Does A (Lead) Financial Advisor Spend Their Time?” 18 March 2019, “the average lead advisor at an RIA is responsible for 71 clients... the average advisor at a broker-dealer has 118 ongoing client relationships...” <https://www.kitces.com/blog/how-do-financial-advisors-spend-time-research-study-productivity-capacity-efficiency/>



**Fig. 4. Changes for customers if the DOL rule were to proceed**



Source: Oxford Economics

It is also important to keep in mind that this reduction in supply would entirely be in terms of the small independent financial advisors, and not in the large wirehouse firms. As noted in our previous work, FSI member firms are generally comprised of “a network of affiliated financial advisors operating as small independent businesses located in small to mid-sized communities throughout the country”.<sup>20</sup> It is precisely in those small to mid-sized communities where the retirements (and reduction in competition) will likely have the greatest impacts.

#### 4.2 POTENTIAL REDUCTION IN CHOICE OF INVESTMENT PRODUCTS

Almost half (47%) of financial advisors reported that they expected a reduction in investment options for investors. One reason may be that independent advisors have more independence relative to employees at wirehouse firms, which can mean more flexibility in tailoring financial products to the specific needs of individual clients. At least one interviewee reported that the independent space provides greater flexibility in product choice for advisors. This is echoed in the JD Power survey of independent contractor and employee financial advisors, where independent financial advisors reported 9% higher levels of satisfaction with

47%

of financial advisors  
expected a reduction in  
investment options for  
investors

<sup>20</sup> Oxford Economics, 2020, *The Economic Impact of FSI Members*, <https://financialservices.org/economicimpact> at p. 9

“products and marketing”.<sup>21</sup> Advisors choosing to go the independent RIA route will lose access to important commission-based products, that may otherwise be valuable parts of their clients’ investment and savings strategies.

---

<sup>21</sup> Wealth Management Firms Need Advisors as Brand Evangelists to Attract New Talent, J.D. Power Finds (July 6, 2022), <https://www.jdpower.com/business/press-releases/2022-us-financial-advisor-satisfaction-study>

## 5. CONCLUSION

Based on a large survey of financial advisors and interviews with advisors and financial services firms, it is clear that industry participants are concerned about potentially significant disruptions to their occupations and business models. That said, the magnitude of the impacts of the potential rule change for independent financial advisors are at this point not certain.

All of the evidence we have seen suggests that financial advisors at independent financial services firms value their independence; they want to work outside of the environment of a large employee-model brokerage firm; have the ability to own their own business; have flexibility in how and when they work; and better serve their clients. Around this desire for independence a valuable and innovative business model of the independent financial services firm has grown, competing robustly to better serve affiliated financial advisors and investors. This industry has increased competition for financial advisor services generally, and broadened the base of consumers.

The proposed rule, through increasing uncertainty around this business model, impacts industry participants by potentially increasing costs, forcing changes and reorientations in focus of business lines, and potentially bringing forward retirement decisions of affiliated financial advisors. This report has set out how some of these costs may be significant,<sup>22</sup> and how these impacts will ultimately be felt by consumers in the form of reduced access to advice, higher account minimums, increased fees and commissions, and a reduction in investment options.

---

<sup>22</sup> These costs greatly exceed the Department's estimated regulatory familiarization costs of \$5.34 (per independent contractor) and \$24.97 (per establishment). Employee or Independent Contractor Classification Under the Fair Labor Standards Act, 87 Fed. Reg. 62,218

## **APPENDIX: METHODOLOGY**

### **SURVEY**

To generate the results outlined in this report, Oxford Economics, in consultation with FSI, prepared and distributed an online survey to financial advisors affiliated with FSI members, and representatives at FSI member firms. The survey was in the field between December 7 and December 20, 2022. Responses were limited to one per IP address, the completion rate was 76% and the typical time spent was around five and a half minutes on the survey.

An initial question sorted respondents into a series of questions phrased for independent financial advisors or into a similar set of questions geared towards representatives of financial services firms. In total, 614 responses were received from financial advisors.

In addition, 14 responses were received from representatives at FSI member firms. The following steps were taken to arrive at that final set of responses: first we limited survey responses to individuals who reported that they represented an independent broker dealer or corporate RIA; next we deleted individuals who also responded that they were advisors or registered representatives; then we deleted responses from respondents who reported overseeing fewer than 20 independent affiliates; finally we deleted responses from individuals who reported representing a non-FSI member firm. In the remaining set of 16 FSI member responses we received three separate responses from one firm, so we selected the final response received.

The survey questions were designed by Oxford Economics following a set of six interviews—three with executives at financial services firms, and three with independent financial advisors. FSI was asked to provide input on the survey to help ensure the language used would be clear to respondents.

### **INTERVIEWS**

In preparing the survey questions and this report, Oxford Economics conducted three interviews with executives of FSI member firms of varying sizes and specialties, and three interviews with independent financial advisors. The introductions were arranged by FSI. Discussions were wide-ranging, including both prepared questions, and an open-ended invitation to provide any additional information. The interviews were documented; however, anonymity was a precondition to the participation of those interviewed.



OXFORD  
ECONOMICS

**Global headquarters**

Oxford Economics Ltd  
Abbey House  
121 St Aldates  
Oxford, OX1 1HB  
UK

**Tel:** +44 (0)1865 268900

**London**

4 Millbank  
London, SW1P 3JA  
UK

**Tel:** +44 (0)203 910 8000

**Frankfurt**

Marienstr. 15  
60329 Frankfurt am Main  
Germany

**Tel:** +49 69 96 758 658

**New York**

5 Hanover Square, 8th Floor  
New York, NY 10004  
USA

**Tel:** +1 (646) 786 1879

**Singapore**

6 Battery Road  
#38-05  
Singapore 049909

**Tel:** +65 6850 0110

**Europe, Middle East  
and Africa**

Oxford  
London  
Belfast  
Dublin  
Frankfurt  
Paris  
Milan  
Stockholm  
Cape Town  
Dubai

**Americas**

New York  
Philadelphia  
Boston  
Chicago  
Los Angeles  
Toronto  
Mexico City

**Asia Pacific**

Singapore  
Hong Kong  
Tokyo  
Sydney  
Melbourne

**Email:**

[mailbox@oxfordeconomics.com](mailto:mailbox@oxfordeconomics.com)

**Website:**

[www.oxfordeconomics.com](http://www.oxfordeconomics.com)

**Further contact details:**

[www.oxfordeconomics.com/  
about-us/worldwide-offices](http://www.oxfordeconomics.com/about-us/worldwide-offices)