



Sacrificing the Pawns

How the U.S. Chamber of Commerce Recruits Small Business Owners to Lobby Against Their Own Self-Interest
A Case Study Based on the Dept. of Labor's Fiduciary Rule

Acknowledgments

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U.S. Chamber Watch is a project of Public Citizen whose mission is to promote greater transparency in the American political system by exposing the lobbying, campaign spending, and misinformation campaigns of the nation's largest and most powerful lobbying organization, the United States Chamber of Commerce.



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Executive Summary

Organized by the U.S. Chamber of Commerce, a handful of small business owners became the public face of Wall Street's effort to fight a five-year Washington reform effort by the Department of Labor (DoL). The DoL sought to guarantee that financial advisors provide people saving for retirement with investment advice that is in their best interests. The end result of this reform is a DoL rule (known as the fiduciary rule) directing investment advisors to put their clients' interests ahead of their own personal interest in obtaining the most lucrative commissions from selling various investment products. The current rules permit conflict of interests that cost investors an estimated \$17 billion annually—money that goes mostly to Wall Street. Since Wall Street can't argue compellingly that it deserves this money, the voices of small business owners became important to the lobbying campaign aimed at stopping this new rule, known as the fiduciary rule.

The U.S. Chamber organized this lobbying campaign, which included congressional testimony, lobby visits to Capitol Hill, and a [webpage](#) featuring roughly two dozen people "speaking out" about alleged problems with the proposed fiduciary rule. While the webpage, headlined "Protect Small Business Retirement," is designed to focus reader attention on small businesses, many of those featured on it are not small business owners at all but are instead trade association officials or lobbyists. The featured small business owners told stories claiming that the current system works well and is even essential to their success. But Chamber Watch found the Chamber's portrayal of these small business leaders' opposition to the fiduciary rule to be at a minimum misleading and in some cases downright false. In fact, far from a groundswell of grass roots advocacy by small business, this was more akin to an astroturf campaign organized by the Chamber.

Of the 25 people/businesses on the webpage, Chamber Watch attempted to contact each of the small business owners as well as some of the other officials who were "speaking out." We found:

- Almost a third (eight) of the 25 people featured are not small business owners at all but are instead officials at chambers of commerce, lobbyists for the brokerage industry, or other officials. That officials at chambers of commerce and lobbyists for the brokerage industry would oppose a rule that would negatively impact Wall Street profits should come as a surprise to no one. Their testimonials have presumably been added to pad the numbers of those "speaking out" against the rule.
- One of these eight is a government official whose office organized a roundtable to receive comment on the proposed rule from small businesses. But the people whose input was solicited at this roundtable were not representative of the approximately 28 million small businesses in the United States. Five of the 14 people present at this roundtable were investment advisors whose ability to recommend investment products with large commissions would be curtailed by the rule. Six others worked for trade associations and other groups opposed to the rule including one from the U.S. Chamber of Commerce.
- The remaining 17 people featured are either small business owners or non-profit executives. Of these, five spoke with and/or corresponded with Chamber Watch.

- One Chicago non-profit leader did not have a view on the rule and didn't even know that he was listed on the webpage as being opposed to the rule. He subsequently called the Chamber and his name was removed.
- One small business owner, far from defending the status quo, argued for an even tougher rule, and stated that the proposed rule is overly generous and should be stricter to prevent "mendacious" activities.
- One California small business owner who argued on the Chamber webpage that the current system helped her grow employment at her business over the last 12 years acknowledged to Chamber Watch that she had only one employee.
- One Indianapolis small business owner whose business is to make sure contractors meet construction codes said she generally opposes regulations because they raise the cost of business. This, despite the fact that her very business is predicated upon verifying that construction companies comply with government regulations.
- One Missouri small business owner who stated on the Chamber webpage that the fiduciary rule is worse than all other DoL rules told Chamber Watch that he in fact didn't really follow the fiduciary rule closely.
- The remaining 12 small business owners, despite being presented as "speaking out" by the Chamber, did not respond to emails and phone calls from Chamber Watch.
- One of these 12 is identified as a "human resources" officer at a firm that does not appear to exist any longer except as an unmaintained website.

The Chamber's lobbying campaign featuring small businesses as the public face of opposition to the fiduciary rule is central to its communications strategy. The Chamber frequently uses small businesses and non-profits to argue against rules that either largely don't affect them, or as in the case of the fiduciary rule, are designed to benefit them. Indeed, Chamber President Thomas J. Donohue openly acknowledges his strategy to use small business owners as "foot soldiers" to provide "political cover, for issues big companies want pursued."¹ As in chess, he is sacrificing the pawns.

On June 1, 2016, the Chamber and 8 other groups filed suit against the Department of Labor to block the fiduciary rule. The Chamber's lawsuit makes numerous claims, including that the rule would be costly to small businesses. Chamber Watch's exposé of the Chamber's small business charade should help any future court reviewing the rule to understand that these costs may reside largely in the imagination of Washington's largest and most powerful lobby.

¹ Danny Hakim, *Big Tobacco's Staunch Friend in Washington: U.S. Chamber of Commerce*, NEW YORK TIMES (October 9, 2015), <http://www.nytimes.com/2015/10/10/business/us-chamber-of-commerces-focus-on-advocacy-a-boon-to-tobacco.html? r=0>.

Wall Street's \$17 Billion Money Grab

Each year, Wall Street stealthily siphons an estimated \$17 billion from savers through the sale of overpriced investment products, according to government estimates.² This number is based on the approximately \$1.7 trillion worth of money invested in IRAs in instruments where brokers are paid commissions that vary based on the type of investment. It's stealthy because the investment products aren't bad; they're just a little more expensive than those that don't remit as good a commission to a Wall Street broker. Mercer Bullard, professor of law at the University of Mississippi Law School, explained in a congressional hearing how this works with specific examples.³ With a given \$10,000 investment, a broker might make only \$60 for selling bond funds, but \$500 for a stock fund, even though the bond fund might be a better option and less expensive for the client.⁴ And the DOL estimate of losses to savers doesn't account for the likely billions of dollars in additional retirement savings that are siphoned away each year via the sale of investment products to investors who have other types of retirement savings accounts, such as 401(k)s.

The DoL fiduciary rule proposes to reduce this \$17 billion annual loss by mandating that Wall Street puts the investor's best interest ahead of any consideration of broker compensation. This proposed rule applies to tax advantaged plans such as those small business-sponsored plans governed by 401(k) or IRAs. Such plans are the purview of the DoL.

There are roughly a half million 401(k) plans in the United States, according to the Investment Company Institute, a trade association. These plans hold collectively about \$4.4 trillion for about 52 million American workers.⁵ As firms large and small cease offering pension plans, these employee-funded 401(k) plans have become an increasingly important part of American retirement security.

Enter the Chamber Of Commerce

Wall Street firms were unlikely to let this \$17 billion go without a fight. But here's Wall Street's challenge: it's unseemly—if not counterproductive—for Wall Street to argue publicly that the rule costs it money. In Washington, Wall Street is synonymous with greed, with taxpayer bailouts, with bonus-bloated executives. Instead, Wall Street must argue that the rule somehow hurts savers and small business.

Enter the U.S. Chamber of Commerce. The Chamber claims to represent 3 million business owners across America; in fact, it represents at most 10 percent of this figure. It quotes the 3 million figure

² The Effects of Conflicted Investment Advice on Retirement Savings, Executive Office of the President of the United States (February 2015),

https://www.whitehouse.gov/sites/default/files/docs/cea_coi_report_final.pdf.

³ Testimony, Mercer Bullard, Hearing on Preserving Retirement Security and Investment Choices for All Americans, U.S. House of Representatives, (September 10, 2015),

<http://financialservices.house.gov/uploadedfiles/hhrg-114-ba16-ba09-wstate-mbullard-20150910.pdf>.

⁴ Testimony, Mercer Bullard, Hearing on Preserving Retirement Security and Investment Choices for All Americans, U.S. House of Representatives, (September 10, 2015),

<http://financialservices.house.gov/uploadedfiles/hhrg-114-ba16-ba09-wstate-mbullard-20150910.pdf>

⁵ *How large are 401(k)s?*, INVESTMENT COMPANY INSTITUTE,

https://www.ici.org/policy/retirement/plan/401k/faqs_401k (viewed on March 30, 2016).

in every public communication—in advertisements, in letters, on its website, and in congressional testimony.

In reality, the Chamber almost exclusively represents the interests of big business, including Wall Street. A 2014 Chamber Watch report showed that it receives the majority of its funding from 64 large business donors.⁶ Its members include the mega-banks that wrecked the economy with the 2008 crash. It has also defended the interests of MetLife and other big insurance firms. These banks and insurance companies loathe the DoL's proposed rule. They've lobbied to block this rule in a multi-front attack—lobbying, congressional hearings, legislation, advertisements and more.⁷⁸ The fact that they are lobbying so fiercely is an indirect confirmation of just how much money is at stake—how much Wall Street stands to lose if forced to put client interests first, according to the DoL's Timothy Hauser.⁹

In chess, pawns are often sacrificed to achieve an advantage for the ultimate goal of winning the opponent's king. The term "pawn" comes from armed peasants used as infantry, or foot soldiers. That's an instructive metaphor for how the Chamber may view small business. Chamber President Tom Donohue openly calls them "foot soldiers." In a letter, he explained that small business members "provide the foot soldiers, and often the political cover, for issues big companies want pursued."¹⁰ In an interview, he said firms with image problems come to the Chamber, and "I want to give them all the deniability they need." He called the Chamber a "reinsurance industry for individual industry associations and state chambers of commerce and people of that nature."¹¹ Donohue pointed to Wall Street which faced political pressure after the 2008 financial crash. They "come to us and say, 'Can we collect our reinsurance?'" he explained. "And then we build coalitions and go out and help them."¹² That's especially useful to industries with image problems in Washington such as Wall Street.

⁶ SAM JEWELER, PUBLIC CITIZEN/ CHAMBER WATCH, THE GILDED CHAMBER (February 6, 2014), <http://www.citizen.org/documents/us-chamber-of-commerce-funders-dominated-by-large-corporations-report.pdf>.

⁷ The articles on this issue are numerous. See, for example, Brian Mahoney, *Chamber Lobbies White House on Fiduciary Rule*, POLITICO (March 8, 2016) <http://www.politico.com/tipsheets/morning-shift/2016/03/chamber-lobbies-white-house-on-fiduciary-rule-213086>.

⁸ Chamber uses Fidelity for its 401(k) management.

⁹ *Conflict of Interest Proposed Rule Public Hearing*, DEPARTMENT OF LABOR, <http://www.dol.gov/ebsa/regs/1210-AB32-2-Hearing.html> (website viewed March 30, 2016).

¹⁰ Danny Hakim, *Big Tobacco's Staunch Friend in Washington: U.S. Chamber of Commerce*, NEW YORK TIMES (October 9, 2015), <http://www.nytimes.com/2015/10/10/business/us-chamber-of-commerces-focus-on-advocacy-a-boon-to-tobacco.html? r=0>.

¹¹ James Verini, *Show Him the Money* WASHINGTON MONTHLY (July/August 2010), <http://www.washingtonmonthly.com/features/2010/1007.verini.html>.

¹² James Verini, *Show Him the Money* WASHINGTON MONTHLY (July/August 2010), <http://www.washingtonmonthly.com/features/2010/1007.verini.html>.

Astroturf

A key element of the U.S. Chamber's effort to combat the fiduciary rule consisted of a group of small business owners it claimed were "speaking out" about the problems with the rule. Their concerns were posted on a Chamber webpage. The webpage, titled "Fix the Rule," explains that "Small businesses, chambers of commerce, associations and others across the country *have spoken out* about the benefits of being able to offer retirement benefits to their employee and what would happen if they no longer had that ability."¹³ (Italics added.) Chamber Watch took this webpage declaration at face value that these business owners were interested in having their objections to the fiduciary rule heard. We attempted to contact all of the 17 small business representatives listed on the Chamber's webpage dedicated to the issue, as well as those who participated in a related Small Business Administration Office of Advocacy roundtable that is referenced on the Chamber's webpage.

But few of these small business leaders responded to Chamber Watch e-mails and phone calls asking for further comment. Those who did respond either painted a picture different from what the Chamber webpage portrays or provided explanations for their opposition to the fiduciary rule that did not stand up to scrutiny. The table at the end of this report includes each name listed on the Chamber's webpage, their public comment, and then further information following Chamber Watch's outreach.

An executive whose organization promotes athletic activities for underprivileged Chicago youth asked that his name be taken off the Chamber's webpage. When first contacted, he declared no knowledge of this webpage. When shown the webpage, he asked how he could be removed. Chamber Watch referred him to the main telephone number in Washington for the Chamber. A week later, the Chicago executive reported to us that his name had been removed from the Chamber webpage.¹⁴

Applynx Website Solutions is a small business in California. On the Chamber webpage, the firm owners explain, "We started a small web development business 12 years ago in a county that has the 2nd most unaffordable housing prices in the state. As we look to grow our small team, we have had to think creatively about how to attract the experienced and skilled programmers we need, while competing against larger corporations for talent. Being able to offer retirement benefits is critical for businesses like ours to succeed and grow. The Department of Labor could put small businesses at a big disadvantage by making it harder and more expensive for them to offer these benefits." Twelve years of growth that actually turns on secondary details such as the financial advisor's duties with respect to the company's benefits plan suggests a prodigious number of employees. Yet Chamber Watch learned that in the 12 years they have grown this firm, the number

¹³ *Fix the Rule—What Others are Saying*, U.S. CHAMBER OF COMMERCE, <https://www.uschamber.com/issues/retirement/protect-small-business-retirement/fix-the-rule-what-others-are-saying> (viewed March 31, 2016).

¹⁴ E-mail exchange available upon request.

of “skilled programmers” that the firm’s owners have successfully recruited and now work for the firm, in part because of the current system they believe shouldn’t be refined, is *one*.¹⁵

One small business owner did speak voluminously. He is Donald Trone. Trone reported that he has consulted and written extensively about fiduciary issues. But whereas the tenor of the other small business owner comments on the Chamber webpage speaks to onerous new rules, Trone believes that the DoL rule would actually enable “dishonest advisors” who “hide their mendacious activities.”¹⁶ Trone even takes exception to the lobbying effort surrounding the DoL’s rule which involves a “cover up” of “unethical activity” In one of his columns, he explores “why Wall Street’s DoL killer threat — that ‘millions’ of IRA investors will go unadvised under new rules — is hogwash.”¹⁷

Richard Schneider, a small business owner from Missouri, stated on the Chamber webpage that “as someone that’s run a business for over a decade, I can tell you that the list of illogical Labor Department rules is long, but this ‘fiduciary’ rule tops them all.” Yet when contacted by Chamber Watch, he admitted that the Chamber approached him and he didn’t follow the fiduciary rule closely. This admission suggests that his statement on the Chamber webpage is at best, uninformed, and at worst, invented.

Chamber Watch devoted special effort to understand the concerns of Rachel Doba. That’s because she is highlighted on the Chamber webpage. Further, she testified before Congress on behalf of the Chamber. In December, 2015, she travelled the 600 miles from her home in Indianapolis, Ind., to Washington, D.C., to deliver testimony before a congressional committee. Doba is president of an Indianapolis engineering inspections firm. Doba testified, “I have a trusted advisor that has provided great service, which has allowed me to provide retirement security for my employees and me. This proposal puts all of that in jeopardy.”¹⁸ The Chamber’s webpage features Doba’s testimony, including a picture of it. A screenshot taken from the committee’s archived video is reprinted here.¹⁹

¹⁵ E-mail available upon request

¹⁶ *Fix the Rule—What Others are Saying*, U.S. CHAMBER OF COMMERCE, <https://www.uschamber.com/issues/retirement/protect-small-business-retirement/fix-the-rule-what-others-are-saying> (viewed March 31, 2016).

¹⁷ Don Trone, *Don Trone’s 7 Reasons why DOL Rule is flawed to the point of folly*, RIABiz (April 15, 2016), <http://www.riabiz.com/a/5051560128151552/don-trones-7-reasons-why-the-dol-rule-is-flawed-to-the-point-of-folly>.

¹⁸ Testimony, Rachel Doba, Hearing on Principles For Ensuring Retirement Advice Serves The Best Interests Of Working Families And Retirees, (December 2, 2015), http://edworkforce.house.gov/uploadedfiles/testimony_-_rachel_doba.pdf.

¹⁹ From archived video, *Principles for Ensuring Retirement Advice Serves the Best Interests...* (Dec 2, 2015), YouTube, https://www.youtube.com/watch?v=CQf_hUG_51M.



Doba's testimony, as she fully discloses, represents the views of the Chamber, for which she also serves on a Chamber small business council. Her testimony tracks the Chamber's previous public comments. She tailors the Chambers points in terms of her own business. The rule, she said, would reduce the pool of potential advisors.

Doba in effect testified not about prospects for her own industry, which is engineering, but about the rule's alleged detrimental effects for the investment advisory industry. Yet next to her at the congressional hearing, Marilyn Mohrman-Gillis testified as a representative of the Certified Financial Planners Board of Standards and the associated Financial Planning Coalition. Mohrman-Gillis does work in the investment advisory business, unlike Doba. And she said members of her coalition stood ready and already did provide advice under the standards that the DoL proposed for all of Wall Street. When her group adopted a fiduciary standard of conduct for their association in 2007, she explained, "Many firms and industry organizations made arguments similar to those being made about the DOL's re-proposed rule today." They asserted the fiduciary requirement "was unworkable." But "contrary to those predictions," the number of advisors working under this stricter standard "has grown by more than 30 percent to nearly 73,000" since her group adopted the standard. Mohrman-Gillis also stated that if brokers and insurance companies actually do walk away from their smaller accounts under the new rule, then the advisers she represents will happily serve those clients. Moreover, innovative advisory firms using a combination of technology and

human advice have emerged such as Rebalance IRA, and they are serving clients of all means under the best interest standard.²⁰

When contacted by Chamber Watch, Rachel Doba responded, “The problem with the DOL rule is not in its intentions, but in its execution. As a small business owner, I know first-hand how regulations increase my own costs and divert resources away from expanding operations and hiring new employees. The DOL rule imposes significant new compliance obligations on advisors to small business plans like mine, and those compliance costs will be passed on to our plan. I appreciate that you may not share the same views, but as a successful small business owner with practical experience, I have a different perspective on what is beneficial to me and to my employees.”

That’s an interesting anti-regulation posture given the nature of DB Engineering.

DB Engineering LLC is a small company *that depends on government regulations*. It provides inspection services for government-funded infrastructure products. A web document titled “Statement of Qualifications” describes numerous construction projects where DB Engineering provided inspection services to ensure compliance with regulations.²¹ In other words, DB Engineering profits because of regulation.²²

The remaining 12 small business leaders featured on the Chamber’s webpage did not respond to Chamber Watch phone calls and emails. One Chicago executive listed as her firm’s human resources director could not be reached at all. A firm with enough employees to retain an employee simply to manage the employment issues of the firm is typically a firm of some size. Yet this firm does not retain a person to answer the telephone, nor does its website list any employees. The most recent

²⁰ Testimony of Marilyn Mohrman-Gillis on “Principles For Ensuring Retirement Advice Serves The Best Interests of Working Families And Retirees, U.S. House of Representatives (December 2, 2015), <http://financialplanningcoalition.com/wp-content/uploads/2015/07/2015-12-02-FP-Coalition-Written-Testimony-Hosue-HELP-Subcommittee.pdf>.

²¹ *Statement of Qualifications for Professional Engineering Services* DB ENGINEERING, <http://commonwealthengineers.com/wp-content/uploads/2014/11/DB-Engineering-Overview.pdf> (viewed on March 30, 2016).

²² See, for example, DB Engineering employee Jason Koch delivered a 58 slide presentation on “ADA Ramp Construction” to the Indiana Department of Public Works. This begins with the importance of the Americans with Disabilities Act, noting that “1 in 5 of Indianapolis residents have (sic) some sort of disability.” ADA Ramp Construction, CITY OF INDIANAPOLIS, DBENGINEERING, http://c.ymcdn.com/sites/www.acecindiana.org/resource/resmgr/DPW/RPR_2016/ADA_Jason_Koch.pdf (viewed on March 30, 2016). Yet the U.S. Chamber is a long standing opponent of the ADA, and has contested the very stricture of ramp design that DB engineer Koch outlines as important to accommodate the 20 percent of Indianapolis with disabilities. The Chamber disputes that the problem of those with disabilities is widespread. “Much of the justification for the proposed stricter standards is based on anecdotal evidence with no basis in fact,” the Chamber asserts. See: *Americans with Disabilities Act*, U.S. CHAMBER OF COMMERCE, <https://www.uschamber.com/americans-disabilities-act-ada> (viewed on March 31, 2016).

press releases on the firms website are from 2008 and the website itself is copyrighted 2009, suggesting that this firm may no longer even exist. .²³

Many of the names on the Chamber webpage are not exactly small business leaders. Some are current and former government officials. This includes Daniel Gallagher, a former Republican commissioner at the Securities and Exchange Compensation (SEC). Gallagher was outspoken at the SEC in his opposition to Wall Street reform rules.²⁴ He is now an industry lobbyist as president of Patomak Advisors.²⁵ Patomak Advisors lists mutual funds and asset managers among their “representative engagements.”²⁶ Two others featured on the Chamber webpage work for the Financial Industry Regulatory Authority, a Wall Street-funded group that attempts to self-regulate members. FINRA opposes the rule, presumably reflecting its membership’s views. FINRA’s board includes employees of Vanguard, Fidelity, Merrill Lynch, and Edward Jones. All of these firms oppose the rule, arguably because it will interfere with revenue.²⁷ ²⁸FINRA head Richard Ketchum testified at a congressional hearing in opposition to the rule.²⁹ Chamber Watch did not attempt to contact any of these individuals as their opposition to the fiduciary rule is no mystery nor do they have any plausible claim to represent the views of the small businesses that the Chamber is claiming would be hurt by the fiduciary rule.

The Chamber’s Taxpayer-Funded Lobby

In addition to the 17 small business people featured on the Chamber webpage, the Chamber also lists Small Business Administration Office of Advocacy Assistant Counsel Dillon Taylor. Taylor penned a letter to the DoL highlighting the costs to small business.³⁰

²³ *smarTECHS.net SMARTER BUSINESS*, <http://www.smartechs.net/homepage.aspx> (viewed on May 31, 2016).

²⁴ See, for example, Gallagher’s dissent as SEC Commissioner on a mandatory rule to implement a provision on Dodd-Frank that requires publicly traded companies to disclose the CEO’s pay as a multiple of the median-paid employee at the firm. COMMISSIONER DANIAL GALLAGHER, DISSENTING STATEMENT OF COMMISSIONER DANIEL M. GALLAGHER CONCERNING THE PROPOSAL OF RULES TO IMPLEMENT THE SECTION 953(B) PAY RATIO DISCLOSURE PROVISION OF THE DODD-FRANK ACT, (Sept. 18, 2013), <https://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370542558873>.

²⁵ *Professionals, Dan Gallagher*, PATOMAK GLOBAL ADVISORS, <http://patomak.com/professionals/dan-gallagher/> (viewed March 31, 2016).

²⁶ *Representative Engagements*, PATOMAK GLOBAL ADVISORS <http://patomak.com/representative-engagements/> (Viewed March 31, 2016).

²⁷ *FINRA Board of Governors*, FINRA <http://www.finra.org/about/finra-board-governors> (viewed March 31, 2016).

²⁸ *Conflict of Interest Proposed Rule*, DEPARTMENT OF LABOR EMPLOYEE BENEFITS SECURITY ADMINISTRATION, <https://www.dol.gov/ebsa/regs/cmt-1210-AB32-2.html> (viewed June 1, 2016).

²⁹ See critique of Ketchum’s testimony by Better Markets, available at in a letter from Better Markets to Ketchum: <https://www.bettermarkets.com/sites/default/files/DOL%20-%20BM%20Letter%20to%20Chairman%20Ketchum%206-3-15.pdf>.

³⁰ Dillon Taylor, Comments to Department of Labor Re: Definition of the Term "Fiduciary"; Conflict of Interest Rule, Retirement Investment Advice, Small Business Administration Office of Advocacy (July 17, 2015).

Prior to writing this letter, the Office of Advocacy attempted to solicit input from small businesses, as it does with other proposed federal regulations, by organizing a roundtable.³¹ At such roundtables, small business owners can share their views on proposed rules; the Office of Advocacy can then translate these views into a comment letter to the appropriate rule-making regulatory agency.

Chamber Watch attempted to contact each of the small business leaders who are listed as having attended the Office of Advocacy's June 2015 roundtable. Our efforts are described in the table at the end of this report.

Of the 14 persons on the list, five are financial advisors; five represent the interests of financial advisors; one is a U.S. Chamber lobbyist; one is from the Department of Labor; one is from a progressive business group; and only one could be described as a small business owner that the rule was intended to help. This individual is the owner of a furniture business in Corvallis, Ore. He explained to Chamber Watch that he participated in the roundtable at the suggestion of a long-time acquaintance who owns an investment advisory firm. That is, his interest was not self-generated.³²

The Center for Progressive Reform found that Office of Advocacy roundtables are routinely captured by industry. It found that that the Office "enables trade association lobbyists to subvert its small business outreach efforts."³³ The authors concluded, "At times it is difficult to find any difference between the positions taken by the Office and those taken by such prominent regulatory opponents as the U.S. Chamber of Commerce."³⁴

<https://www.sba.gov/advocacy/comments-department-labor-re-definition-term-fiduciary-conflict-interest-rule-retirement>.

³¹ *Small Business Roundtable on Employee Benefits*, SBA <https://www.sba.gov/advocacy/small-business-roundtable-employee-benefits-1> (viewed on March 31, 20116).

When Chamber Watch enquired about this asymmetry on the roundtable, Office of Advocacy officer Taylor responded that these costs were going to be borne by the small businesses that provide brokerage services. These are small investment firms, not small businesses that use investment firm products. Asked why the Small Business Administration advocate didn't explore the financial benefits that the millions of small businesses in America might enjoy from the proposed rule, Taylor responded, "Agencies are required to analyze the direct cost of rules on small entities. The RFA does not mandate that agencies analyze the potential benefits of a rulemaking." E-mail available upon request. In fact, that's a debatable reading of the Regulatory Flexibility Act (RFA). This law provides that rule makers must provide analysis of the impacts of their rules on "small entities." Further, "Such analysis shall describe the impact of the proposed rule on small entities." What the RFA does make clear is that rules should be scaled to business size. The DOL fiduciary rule doesn't involve scale; it calls on all brokers to put their client's interests ahead of their own considerations of how much compensation a particular recommendation would generate.

³³ SIDNEY SHAPIRO, JAMES GOODWIN, THE CENTER FOR PROGRESSIVE REFORM, *DISTORTING THE INTERESTS OF SMALL BUSINESS* (2013) http://www.progressivereform.org/articles/sba_office_of_advocacy_1302.pdf.

³⁴ SIDNEY SHAPIRO, JAMES GOODWIN, THE CENTER FOR PROGRESSIVE REFORM, *DISTORTING THE INTERESTS OF SMALL BUSINESS* (2013) http://www.progressivereform.org/articles/sba_office_of_advocacy_1302.pdf.

Conclusion: The Next Battlefield: Court

On June 1, 2016, the Chamber and 8 other groups filed suit against the DoL in Texas to block the rule. Among other claims, the Chamber alleges that the rule would be costly to small business.³⁵

This allegation is part of a common legal strategy, often used in regulatory challenges, to claim that the regulatory agency has performed an inadequate cost benefit analysis of the challenged rule's impact on business, especially small business. While important, this arena is vexing for regulators, as they are often dependent on company-reported information that may be vulnerable to fabrication. Firms and groups that dislike regulation—like the Chamber—may exaggerate costs.

In a courtroom, a judge must make a decision as to the legitimacy of claims that businesses and business groups make about the cost of challenged regulations. Chamber Watch hopes that this report will inform the judge hearing this case as well as the public at large about the integrity of claims about the burden this rule allegedly places on small business. Our report shows that the two dozen small business owners who opposed this rule were either:

- Not detailed or quantitative in precisely how the proposed rule would cost them;
- Not obviously animated or interested enough to respond to Chamber Watch questions, despite the fact the Chamber described each of them as “speaking out;”
- Not small businesses that would benefit from the rule, especially in the case of the Office of Advocacy roundtable participants;
- Unable to provide a credible reason for their opposition;
- Opposed to the rule because it did not go far enough; or
- Were not in fact opposed at all!

³⁵ Complaint in Civil Action No. 16-cv-1476 in the United States District Court for the Northern District of Texas, page 4, <http://bit.ly/1TKNLAR> (viewed June 8, 2016)

Table I Sincere Small Business Owners?

Name, Business	Comment on Chamber webpage	Additional Comment by Chamber Watch
<p>Sarah and Scott Maggelet, Owners, Applynx Website Solutions (San Luis Obispo, Calif.)</p>	<p>"We started a small web development business 12 years ago in a county that has the 2nd most unaffordable housing prices in the state. As we look to grow our small team, we have had to think creatively about how to attract the experienced and skilled programmers we need, while competing against larger corporations for talent. Being able to offer retirement benefits is critical for businesses like ours to succeed and grow. The Department of Labor could put small businesses at a big disadvantage by making it harder and more expensive for them to offer these benefits. California is already a difficult place for small business owners to thrive. Please don't make it more challenging for us at the federal level."</p>	<p>Number of employees: 1</p>
<p>Bill Thornton, President and CEO, Fort Worth, Texas) Chamber of Commerce</p>	<p>"The rule will also limit individual investors' ability to seek access to affordable financial planning services and resources – even if those services and resources are in the saver's best interest."</p>	<p>Not a small business owner; Chamber affiliate</p>
<p>Scott Spiro, President & CEO Computer Solutions Group (Los Angeles, Calif.)</p>	<p>"I founded Computer Solutions Group, Inc. (CSG) 16 years ago to help small and medium-sized businesses manage their information technology to enable them to be successful and grow. In order for my company to stay innovative and ahead of the curve, I must attract and retain the best and the brightest in the technology field. This means I am competing with many of the big guys in California. To make sure I have a shot at getting the talent I need, we must offer competitive benefits. This can be a challenge with only 25 employees. Now, it sounds like the government is trying to make it even harder for me to offer retirement benefits to my staff. My staff is the best— they have a passion for technology and helping others and I want to make sure I can take care of them. If the Department of Labor finalizes a rule that inhibits my ability to provide retirement benefits or my employee's access to educational information, it would make it more difficult for entrepreneurs to grow their businesses. In an era where the government should make my job as a small business owner easier, they are doing the exact opposite."</p>	<p>No response</p>

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<p>Richard Schneider, Owner, Antennas Direct (Ellisville, Mo.)</p>	<p>"I started my business 11 years ago and now employ 40 people. Our employees are our family, which is why I began offering a 401k benefit about five years ago. It's proven to be popular and helped me attract great people to work here, as well as made it easy for them to save for the future. As someone that's run a business for over a decade, I can tell you that the list of illogical Labor Department rules is long, but this "fiduciary" rule tops them all. Adding more steps for people to save? That'll mean less money for retirement. Making it harder to provide financial education? That'll leave our employees in the dark. Increasing the cost of our retirement plan? That'll mean fewer people participating. Putting small business at a disadvantage in the name of safeguards? That's paternalistic. Giving me even more paperwork to sign? That's a step too far. The Labor Department should just fix this rule already."</p>	<p>Chamber approached him several months ago. He doesn't follow rule closely.</p>
<p>Jacqueline Turner, Human Resources Director, SmarTechs (Chicago, Ill.)</p>	<p>"As the person responsible for human resources at my company, I know all too well how important retirement benefits are to attracting and retaining the best employees. I've also seen firsthand how employees have used our 401(k) to save and plan for their future. One of my goals has always been to increase the number of people that take advantage of that opportunity and benefit. Unfortunately, getting people to start saving for retirement is not always easy—especially at a small business like ours. I'm worried that the Department of Labor will discourage even more people from saving by increasing the cost of our plan, which will only make it harder for businesses like mine to keep offering retirement benefits to their employees."</p>	<p>No company employees can be identified; founder now with different firm; website does not appear to have been updated since 2009.</p>

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<p>Rachel Doba, President, DB Engineering (Indianapolis, IN)</p>	<p>“As the owner of a successful, growing small business with sixteen employees. The ability to provide great workplace benefits is both personally important to me and a key factor in my ability to attract the highest quality people that can help my company grow. I am not a finance expert, nor are my employees, so I rely on the information and advice I receive from my advisor in order to make the best decisions for my employees and incentivize them to save for retirement. It’s disappointing that the Department of Labor seems so set on pushing a rule through that would hit businesses like mine the hardest. This fiduciary rule will ultimately discourage my employees from saving by making it more expensive. We can all agree that encouraging retirement savings should be the goal, so let’s not do something that will have the opposite effect.”</p>	<p>Doba’s one email response to multiple questions is reprinted in full in the report. She did not respond to emails asking her the identity of her “trusted advisor,” the number of employees, the number covered by her firm’s retirement plan and other like questions.</p>
<p>John Raine, President, Raine Inc. (Anderson, Ind.)</p>	<p>“I have been in business for the past 29 years manufacturing gear for the military market. We have always pride ourselves on providing an outstanding benefit package to our employees that includes a retirement savings plan. The long term success of this benefit requires advice from professional investment advisors. Investing is very risky and professional advice is essential. This rule would put a significant burden on small businesses and their employees, making it less likely that we will be sufficiently prepared for retirement.”</p>	<p>No response</p>

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<p>Jim Dower Co-founder, Urban Initiatives</p>	<p>"Urban Initiatives is a non-profit organization in Chicago that provides youth development programs for more than 45 schools across the city. As the Co-Founder and Executive Director, I depend on our 401(k) to get and retain UI's incredible staff, many of whom could make more money elsewhere. I've also worked closely with our financial advisor to help educate our (mostly young) employees on the importance of planning and saving for retirement early. Now it looks like DOL will practically regulate this benefit away. While I'm concerned about what this proposal will do to my ability to hire the best people, what is most disappointing is thinking about what that ultimately means for the thousands of Chicago kids we work with every day. They may not realize it, but this proposal could have a negative impact on those kids by making things harder for organizations like mine. If I could ask DOL to do one thing, it would be to take the time to consider that possibility...and hopefully prevent it."</p>	<p>In response to a Chamber Watch email about his comment, Mr. Dower responded: "Who do I call to get this down?" (E-mail available upon request) Subsequently, he e-mailed to say that Chamber had taken down his comment.</p>
<p>Gary Marowske, Owner, Flame Furnace (Warren, Mich.)</p>	<p>"In my line of business, controlling costs is critical to keeping the company running, and growing over time. Despite the pressure to cut costs, I continue to offer a 401k plan as one of several benefits for our employees – because it's the right thing to do. The participation rate in our plan remains high because I always stress to my employees the importance of planning for their financial future and try to give them the resources to make smart decisions. DOL may have the right intention with this proposal, but I'm worried they'll still get it wrong in the end. If you're another small business owner and reading this, I hope you take the time to call your Congressman and ask them to make sure DOL doesn't put small businesses and our employees at a disadvantage."</p>	<p>No response</p>

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Jeff and Susan Sams, Owners, Sams Carpet Cleaning & Repairs (St. Charles, Mo.)	<p>"As a company, we feel it's important to invest in our employees by offering not only a way for them to save money for the future, but also helping them reach their goals by matching contributions to their retirement plan. However, many of our employees are in their 20s and 30s, and don't recognize the importance of saving now for retirement later. The federal government should be more focused on trying to help young people entering the work force to start saving – period. This rule will only make it more confusing. They have to get this right, or risk discouraging more people from even taking the first step toward retirement savings."</p>	<p>No response</p>
Russ Bennett, President, Bennett Office Technologies Inc. (Willmar, Minn.)	<p>"I currently offer access to retirement savings plans as part of our benefit package to my employees and it is a HUGE benefit. If it starts to cost more to offer the plan those costs would be passed on; therefore, employees would unfortunately save less, not save enough, or be as easy. Worst of all, we may lose employees in a very tight job market. My employees are extremely satisfied with the way it is... There is no need to have the government interfere more in this area."</p>	<p>No response</p>
Donald B. Trone, Founder and CEO, 3ethos (Mystic, Conn.)	<p>"The new rules will make it harder for good advisors to provide generally accepted fiduciary best practices and make it easier for dishonest advisors to hide their mendacious activities."</p>	<p>As his Chamber comment notes, he proposes a stronger rule.</p>
Todd Ewing, Company Founder, Federal Title & Escrow Company (Washington, D.C.)	<p>"I am a proud small business owner who has been successful despite the recent economic downturn. Part of our winning formula is the ability to compensate our employees with retirement plans and low-cost investment advice. I am afraid, however, that the DOL's new 'fiduciary' rule will cut them off from receiving critically important investment education and materials on investment options. If that happens, my employees will be left in the dark with little or no guidance on how best to invest their savings."</p>	<p>Response promised by firm representative, but none came.</p>

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<p>Claudia Rodgers, Acting Chief Counsel, and Dillon Taylor, Assistant Chief Counsel, SBA Office of Advocacy</p>	<p>"These small business stakeholders report that the proposed rule will likely increase the costs and burdens associated with services smaller plans sponsored by small business employers. Small business owners expressed concerns that the proposal could limit financial advisers' ability to offer savings and investment advice to clients, such as suggesting options for an IRA rollover. These small businesses stakeholders report that the proposals could ultimately lead advisers to stop providing retirement services to small businesses."</p>	<p>Not small business owners. See Table II, and discussion below.</p>
<p>Richard Ketchum, CEO, Financial Industry Regulatory Authority (FINRA)</p>	<p>"Depictions of the present environment as providing "caveat emptor" freedom to broker-dealers to place investors in any investment that benefits the firm financially with no disclosure of their financial incentives or the risks of the product are simply not true, nor are they an accurate starting point to justify a new standard of care."</p>	<p>Not a small business owner. Membership includes big Wall Street brokerages opposed to the rule.</p>
<p>Dan Gallagher, former SEC Commissioner</p>	<p>"Proving that the nanny-state is alive and well, DOL is proposing to substitute its judgment for that of investors..."</p> <p>"You're going to lose choice for investors and it will be a real mess. ...This is a total gift to the plaintiff's bar."</p> <p>"You hear Perez out saying [DOL has] met substantively nine times with Chair White, our staffs have been coordinating, and yet they pump out a reproposal that doesn't mention the SEC at all."</p>	<p>Not a small business owner. Currently a lobbyist for mutual fund companies.</p>
<p>Life Insurance Professionals</p>	<p>"Quite simply, this rule will raise product costs, reduce consumer choice, and limit access to professional advice for retirement savers that need it the most—from excessive disclosure and data keeping requirements to provisions that prevent small businesses from providing their employees with affordable retirement savings vehicles."</p> <p>"This rule will significantly limit my ability to provide educational information, professional financial advice, and critical savings products to retirement savers that need them the most."</p>	<p>Chamber Watch did not attempt to contact this group</p>

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Marcia E. Asquith, Senior Vice President and Corporate Secretary, Financial Industry Regulatory Authority (FINRA)	<p>"If the Proposal were adopted as is, many broker-dealers will abandon these small accounts, convert their larger accounts to advisory accounts, and charge them a potentially more lucrative asset-based fee. They will do so largely because of the BICE constraints on differential compensation, the ambiguities in the best interest standard, the lack of clarity concerning various conditions, the costs of compliance, and uncertainty about the consequences of minimal non-compliance."</p>	<p>Not a small business owner. Membership includes big Wall Street brokerages opposed to the rule.</p>
James H. Szostek, Vice President, Taxes & Retirement Security, American Council of Life Insurers	<p>"The proposal would effectively limit or deny access to guaranteed income products that are increasingly important to millions of Americans who no longer have access to a traditional pension."</p>	<p>Not a small business owner. Represents a trade association whose membership includes big life insurers.</p>
Patricia Owen, Owner and President, FACES Day Spa (Hilton Head, S.C.)	<p>"I have been a small business owner for over 30 years, since opening my doors in 1983. Today, I employ 25 people that are the heart and soul of my business. Anyone that runs a business knows how competitive it is out there, especially the competition to hire the best people. As someone that decided to set-up shop in a popular vacation spot, I'm competing for talent with the big boys—the established resorts that have very comprehensive benefits. Making sure my employees have access to equal, if not better benefits, is my #1 goal. So I don't understand why the Department of Labor is proposing a rule that treats the retirement plan I offer my employees different than the ones the resorts can offer. In an ideal world, my business would be treated fairly and my employees would have access to more savings options. That doesn't seem to be the Labor Department's world. I hope Congress can help change their mind and fix this rule so it helps small businesses like mine in the long run."</p>	<p>No response</p>

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Jamie Tridico, Physical Therapist and Owner, Advanced Physical Therapy (Charleston, WV)	<p>"The more I learn about the Labor Department's rule, the more nervous it makes me about how it will impact my business and my employees. In the past, we were dropped from our both our life insurance and our short- and long-term disability plans because our small business – nine full-time employees – wasn't big enough to sustain them. I'm very anxious that is exactly what's going to happen here with our retirement benefits. If this rule is implemented, can we keep our plan? Will our costs go up? I'm just not sure, and the Labor Department isn't offering any reassurances."</p>	<p>No response</p>
Dr. Colin Holman and Dr. Natalie Frazier, Owners, Dental Expressions (Oklahoma City, OK)	<p><i>"When we first opened our dental practice five years ago, we knew that in order to hire the best people to support us, we needed to provide good benefits that helped make their lives easier. Retirement savings options have always been key to that philosophy, because we realize how important it is for people to save for retirement, and how a workplace plan could make doing so simpler and less costly for everyone. Several years ago, we established a 401K and have been pleased to see many of our employees take advantage of it. However, we would love to see more participation—especially since we have a such a young workforce. We were kind of shocked to learn how small businesses like ours are treated unfairly under DOL's proposal and are worried it could cause even fewer of our employees to set money aside."</i></p>	<p>No response</p>
Howard M. Rosenblatt, H. M. Rosenblatt, Attorney-at-Law, P.A. (Gainesville, FL)	<p>"Being able to offer a retirement account for my employees provides them with a means to save money for retirement and to get competent advice without having to pay a large fee. I'd be upset if we lost access to a financial professional to help administer our plans. It's hard to find someone you can trust. Having access to a financial advisor without paying a large fee helps people making less than \$100,000 a year."</p>	<p>No response</p>
Trey Grayson, President and CEO, Northern Kentucky Chamber of Commerce	<p>"Small businesses will be at a disadvantage without the ability to offer employees a competitive retirement savings package."</p>	<p>Not a small business owner.</p>

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Mike Harris, Co-Founder, Uproar PR (Orlando, FL)	"At Uproar PR, our employees are our product. Making sure our employees thrive means building a great culture and providing the best benefits. Retirement benefits are one of the ways we put our employees' future at the forefront, so a couple years ago we set up a SIMPLE IRA plan. People love it and it's proven to be a great way to get people to save for their future. The DOL retirement rule is going to make it harder for people at small businesses like ours to save for their future. Our #1 priority is to make sure our employees have everything they need. Congress should make sure that is DOL's priority too."	No response

Table II: Government Roundtable of Small Business Owners, of which only one is a conventional small business

Name	Organization, as described by SBA Office of Advocacy	Further explanation of firm
Judy Mares	EBSA	Department of Labor envoy who explained the rule to roundtable.
Eric Blackledge	Small Business Owner	<p>Owner of Corvallis, Ore furniture store.</p> <p>I am one of the tax and regulatory issues advisory chairs from the 1995 White House Conference on Small Business and we continue to work with SBA office of advocacy on small business issues. One of our issues advisers Sam Gilbert had a more specific interest in this issue. Let me know if you need his contact information. You can see more about our group on our website at www.NationalSmallBusiness.net.</p>
Aliya Wong	U.S. Chamber	The U.S. Chamber opposes the rule.
Sandy Turner	Small Business Owner	From firm's website : Sandra Turner is the President and founder of Retirement Plan Services, Inc., a full service fee-based administration, actuarial and consulting firm for retirement.
Alson Martin	Attorney, Lathrop Gage	From firm's website : Mr. Martin is a recognized national authority in the fields of business law, taxation, healthcare, and employee benefits. He serves as general counsel for over 300 privately owned businesses. Mr. Martin has represented numerous purchasers and sellers of businesses in negotiating, structuring and closing numerous transactions, including management investors involved in taking companies private; the sales of stock, and assets, mergers, acquisitions, spin-offs and split-ups.
Robert Chin	Small Business Owner	<p>Abacus Benefit Consultants</p> <p>From firm's website: Plan Sponsor (Employer) Establishes employee benefit plan(s).</p> <p>Financial Advisor Responsible for the recommendation of the investment options, education and monitoring the investment performance for the plan participants.</p>

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Andrew Remo	ASPPA	From ASPPA website : ASPPA, and its three sister organizations — ACOPA , NTSA and NAPA — comprise the American Retirement Association , the premier national organization for retirement plan professionals in the industry. Based in the Washington, D.C. area, ASPPA is a non-profit professional organization with two major goals: to educate retirement plan professionals, and to create a framework of public policy that gives every working American the ability to have a comfortable retirement.
Judy Miller	ASPPA	See Remo, above.
Sam Gilbert	Small Business Owner	Sole proprietor of independent pension advisory firm. Adviser to Eric Blackledge, see above.
Dan Bosch	NFIB	Policy analyst from trade association opposing the rule.
Craig Hoffman	Small Business Owner	Associated with investment advice trade association.
Chris Armstrong	Small Business Majority	Employee of progressive small business group.
Gary Kushner	Small Business Owner	Provides benefits advice to businesses.
Timothy Dawson	Financial Services Industry	Financial Services Institute website explains : The Financial Services Institute (FSI) was founded in 2004 with a clear mission: to ensure that all individuals have access to competent and affordable financial advice, products and services delivered by a growing network of independent financial advisors and independent financial services firms.