Business Roundtable

Statement for the Record

Business Roundtable

Before the

Subcommittee on Oversight

Committee on Ways and Means

United States House of Representatives

Hearing on

"The Department of Labor's Proposed Fiduciary Rule"

September 30, 2015

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Business Roundtable, an association of chief executive officers of leading U.S. companies, represents member companies with over $7.2 trillion in annual revenues and nearly 16 million employees. Business Roundtable member companies provide retirement, health and other employee benefit coverage to more than 40 million American employees, retirees and their families.

On behalf of the more than 200 CEO members of Business Roundtable, we commend the Subcommittee for holding this hearing on the Department of Labor's proposed fiduciary rule. As advocates for smart regulation, America's business leaders support all efforts to make the federal regulatory process more transparent and open to public engagement, which will yield higher quality data, more complete and objective cost-benefit analyses and smarter, less burdensome rules. This hearing and others like it are critical to achieving those goals.

Rules and regulations exist to protect people, but a regulation can only be effective if it is carefully designed to fit the problem it is meant to solve. The Department of Labor's proposed changes in the interpretation of the Internal Revenue Code and the *Employee Retirement Income Security Act* (ERISA) fail to meet that objective. To the contrary, the complex and prescriptive proposal likely would lead to serious unintended consequences that could result in significant economic disruption and harm to the retirement security of millions of participants in retirement and other employee benefit plans.

The Labor Department's goal is to ensure that financial professionals act in the best interests of retirement plan participants when providing investment advice to a retirement plan or its participants. We wholeheartedly agree that the plan participant's interests must come first but that will not be accomplished if, as the Labor Department has proposed, complex and burdensome barriers are erected that will essentially deny retirement plan savers access to important information about and assistance with investment alternatives and services.

The Labor Department's proposed definitional changes are too broad and too subjective, and its proposed exemptions are too narrow and would raise the costs of saving for retirement. For example, the proposed regulations' new investment advice fiduciary standard would apply to activities, interactions and relationships that should not be considered "investment advice" under ERISA or the Internal Revenue Code. Important investment education that our member companies currently provide to retirement plan participants would be unnecessarily limited, and the complex new rules and byzantine proposed exemptions have the potential to sweep plan sponsors and their employees into unwarranted litigation.

Business Roundtable and many of our member companies have filed extensive comments with the Labor Department on these and many other issues. An overriding concern is that the proposed regulation would not leave sufficient room for activities that are designed to help and encourage individuals to save, invest and plan for retirement. In fact, financial education and planning assistance are among the most beneficial services that many thousands of employers and financial advisors across the United States offer to their employees and clients.

Overall, the Administration needs to go back to the drawing board on its proposal and seriously evaluate the availability of less burdensome alternatives.

Among the thousands of comments filed on the Labor Department's proposal, almost 200 members of Congress (from both sides of the aisle) have expressed serious concerns. A September 24, 2015, letter to Labor Secretary Thomas Perez from almost 100 House Democrats emphasized that the Labor Department should "consider options for convening a small working group of industry professionals and consumer advocates to aid with the finalization of the Rule."

We strongly agree. Broad and complex regulatory reinterpretations can cause great disruption in existing relationships and practices, particularly when they involve changes to a long-standing definition. While some change may be appropriate, a wholesale reengineering transformation of this magnitude and importance requires time and warrants an especially robust discussion among stakeholders. Critically, in the instant case, interested parties should be provided with the opportunity to evaluate and comment on the changes that the Labor Department will have to make before its fiduciary regulation can be finalized.

A letter from Subcommittee Chairman Roskam to the Labor Department concluded by emphasizing his belief that "there is a great opportunity for Congress to work with DOL and others in establishing new standards for the benefit of consumers in retirement services." As shown by the broad bipartisan support for substantial revision to the Labor Department's proposal, there is a better way forward that not only offers better advice to all retirement savers, but also eliminates the unintended harmful side effects.

Thank you for your attention to this important matter. On behalf of Business Roundtable, I stand ready to work with you and the Administration on a solution that works best for our employees and all retirement savers.

CONGRESS NEEDS TO SET "FIDUCIARY" DEFINITIONS ASIDE & PUT CONS THAT VIOLATE FIDUCIARY WHERE COPS CAN FIND THEM

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The Committee On Ways and Means hosting a hearing on the Department of Labor's proposed fiduciary rule is frightening.

The DOL has chosen to freezer tray definition of the word, *"fiduciary."* This conversation of *"fiduciary"* has less to do with a definition of a word or market performance than it has to do with what happens after the crime of Breach of Fiduciary, 401k, broker, brokerage, investment advisor, financial consultant, arbitrator, mediator even lawyer have been discovered.

Wikipedia defines "Fiduciary" as *"A fiduciary is a person who holds a legal or ethical relationship of trust with one or more other parties (person or group of persons). Typically, a fiduciary prudently takes care of money or other asset for another person. One party, for example a corporate trust company or the trust department of a bank, acts in a fiduciary capacity to the other one, who for example has entrusted funds to the fiduciary for safekeeping or investment. Likewise, asset managers —including managers of pension plans, endowments and other tax-exempt assets— are considered fiduciaries under applicable statutes and laws.[1] In a fiduciary relationship, one person, in a position of vulnerability, justifiably vests confidence, good faith, reliance, and trust in another whose aid, advice or protection is sought in some matter.;[2] In such a relation good conscience requires the fiduciary to act at all times for the sole benefit and interest of the one who trusts."*

Advisors are *"fiduciaries",* there should be no question of that. Freezer tray? The term describes how Congress tends to compartmentalize and freeze out co-morbidity criminal fiduciary behaviors. Congress must expand the reach of this conversation to all aspects of the financial industry- broker, dealer, investment advisor- and, to insurance, too. Someone in Congress decided to include Insurance under the umbrella of the Securities Commissions. Why? I have a good answer that I never could have thought of…. Because the insurance companies invest clients premiums to make *"what if"* money. Hearing that, was the first time I understood the role of AIG in the market crash of 2008. The *'house'* so to speak was gambling with client entrusted paid premiums, so *"fiduciary"* extends to the Insurance industry, too, in this Congressional conversation.

The best interest clause is not assumed or presumed, it is a requirement of someone who takes on responsibility of someone else's *"other,"* in this case, money.

It does not occur to consumers that someone they know, read about or were introduced to can argue no legal obligation to trusting oversight of hard earned savings. Lawyers hired by thieving financial consultants- brokers, dealers, investment advisors- do a bang up job of arguing for accused clients, that no *"fiduciary"* obligation existed, an argument making one wonder what planet the lawyer got their legal degree from.

It is not in the nature of the trusting financial advisor client to hand over entrusted hard earned dollars needed for retirement to some stranger just because *'they are a nice guy.'* Hard earned cash is handed over because a pitch has been made to the consumer with the representation of there being a return, a performance of *"fiduciary."*

There are no effective requirements and laws in place that will help a consumer know better and faster if the customer is being played by a con.

1- There is no law telling a financial consultant they must print their Financial Consultant number on ever document, business card, emails, court filings the financial consultant uses in the course of engaging new, past or potential clients
2- There is no law making it illegal for a financial consultant to not put their fingerprints on their U4, and other documents under the oversight of F.I.N.R.A. the only S.R.O. that the S.E.C. has approved of despite Congress allowing for multiple S.R.O.s to be created
3- There is no law stating that a financial consultant must disclose all potential, past and existing customer complaints to potential, past and existing clients
4- There is no law requiring a financial consultant provide potential, past and existing clients to the S.R.O. under a criminal penalty
5- There is no law requiring a financial fiduciary to give the client the fiduciaries passport, driver's license, DOB and all other data relevant for I.D. theft
6- There is no law requiring a financial fiduciary to give the client statements each month. The law says quarterly
7- There is no law requiring a financial fiduciary to turn over to a client, on demand, a cover to cover copy of a client's file just as one would get from the client's doctor if requested
8- There is no law requiring the S.E.C. to bring in to their loop, A.S.A.P. a quarterbacking to all agencies ie consumer, F.T.C., F.C.C. if the fiduciary has a radio show, the securities commissions, if the fiduciary is charged
9- There is no law requiring the S.E.C. and commissions have the fiduciary's clients notified A.S.A.P of the charges against the fiduciary (a) by requiring pop up alerts on the clients website at login, text messages and snail mail letters too.
10- There is no law requiring that consumers be told to file a police report with local enforcement. What the consumer is told, over and over and over again is (i) file an internet complaint with the F.T.C and/or 'we cannot advise you, we cannot give you legal advice, go consult an attorney"

What the consumers have to contend with, in issues of financial fiduciary, is F.I.N.R.A. a pet project of now Senator former Congressman Ed Markey, as implemented sending complaining clients back in to the clutches of the industry the client is seeking justice from. Congressional poster boy on issues of "Fiduciary," is the late Senator Lautenberg, seat filled by Senator Corey Booker (D-NJ). Senator Lautenberg had fiduciary trust in someone.

Bernard Madoff. 401K or otherwise, does it make a difference when the end game, ends the same, fleeced, spirit broken.

Some securities commissions have hyperlinked to F.I.N.R.A. The FSC, financial securities committee stated they do not authorize private business.

Oh, yes they did, intentionally or unintentionally, Congress did, F.I.N.R.A. a big part of Congress' fiduciary problem. F.I.N.R.A. is where fiduciaries go when they want to get away with a financial crime. Lawyers? They have an even sweeter way of getting away from fiduciary fraud. Lawyers threaten a complainant with defamation litigation or have others make calls on the lawyers behalf, off the written record.

As with many industries, people have been forced to hyphenate careers. In the financial industry, a 401(k) financial consultant can also be cross licensed as a broker, a dealer, and investment advisor and a baker and a candlestickmaker, as the expression goes.

F.I.N.R.A., the only broker-dealer regulator that the S.E.C. approved, even though Congress provided for competition, structured a sweet set up that confuses a customer's legal complaint. F.I.N.R.A. has no oversight of Investment advisor complaints. That said F.I.N.R.A. boasts on its website to having 99.9% handling of investment client complaints in F.I.N.R.A.'s dispute resolution forum. There are over 70 F.I.N.R.A.'s dispute resolution forums around the country and, even, M.O.U.'s signed with Canada, Honk Kong, England and other countries.

A client who signs with an investment advisor is led to believe they are handling an investment advisor, not knowing their fiduciary will claim to be a broker and a client of a brokerage, hence, according to F.I.N.R.A. when legal push comes to financial shove.

It is a sweet deal for the financial consultant. The claim against the financial consultant is hid from public and law enforcement knowledge.

It is not a sweet deal for the client. Their claim against the financial consultant is hid from public and law enforcement knowledge where it could alert other harmed and potential clients of this bad fiduciaries crimes and alleged crimes.

F.I.N.R.A. alleges that F.I.N.R.A. has no responsibility to confirming if a forced arbitration is in the correct forum. The correct forum for a complaint against an investment advisor is the courts or a J.A.M.S. or Fed Arb dispute resolution forum.

Congress in a strange moment created Brokercheck for F.I.N.R.A. to hide crimes behind. Congress did not require that Brokercheck state, in letters that should be large enough to be read by seeing impaired people, that F.I.N.R.A. is a 501(c)(6) business league non-profit that the I.R.S. requires to collect dues from the business league members. Congress does not require the F.I.N.R.A. broker check to state, in large letters on page 1, that the information is provided by the F.I.N.R.A. dues paying member and is not vetted out by F.I.N.R.A., that civil and other actions against and by the financial fiduciary and may not be truthful, factual or complete. Congress did not require the S.R.O. to require its 'member' to file all those relevant documents in to the public record for review. Those documents are not see in F.I.N.R.A. arbitration and mediations. F.I.N.R.A. case managers and arbitrators have a success rate of not compelling Discovery of the F.I.N.R.A. member being sued, while at the same time forcing financial and personal exposure of the investment client who thought they had fiduciary oversight, in to the F.I.N.R.A. record that is then shared in the financial network even with the firm or financial consultant the client was complaining against.

F.I.N.R.A., where fiduciaries run to for cover, is the Vegas of the financial world. What goes in to F.I.N.R.A. does not come out.

What good is the balance and check to fiduciary if the financial advisors history is hidden, if the voting record of the arbitrators and mediators is hidden, if the case decisions by arbitrators and mediators are not published. W.I.P.O., the world intellectual property organization, publishes its list of arbitrators, mediators and their decisions online. The S.E.C. publishes its proceedings online. Why doesn't Congress force the same of F.I.N.R.A. that is approved by the S.E.C., after all F.I.N.R.A. claims quasi government status at the same time alleging that F.I.N.R.A. is authorized by an act of Congress.

The point to take away is that with all the minutia that Congress is nitpicking on here, what needs to be addressed is how this rogue private entity is what the investment client is being misled in to. To hell with arguing *"fiduciary standard"* if where that argument takes place is in a forum that has been deceiving Congress for years, testifying before Congress, lobbying Congress, all in the name of investor protection.

Scenarios alluded to above are not hypothetical. I learned the hard way about being a trusting client entrusting my life savings to a fiduciary. I learned the hard way that fiduciary is a debate term for lawyers after monies are stolen. I learned the hard way that a client's loss, a client's suffering from being betrayed is not a thought of consideration in the process. I learned the hard way that as great a loss of funds stolen is how a client is left feeling- broken trying to figure out what they didn't see, what they should have asked, and how did this happen to me, what is wrong with me.

I learned the hard way that even if one asks all the right questions there is always one more question the client did not know to ask after all, F.I.N.R.A., S.I.P.C., N.A.S.A.A., P.I.A.B.A. even the S.E.C. give false sense of representation hence a misplaced sense of trust. Ask clients the meaning of the words a member of FINRA and SIPC on the financial statement form. Clients assume those words are a Good HouseKeeping Seal of Approval. No. I learned the hard way all those words mean are just that, they are a member. There is no intent the firm or financial consultant is honest.

I learned the hard way that F.I.N.R.A. does 'clean' up backgrounds of financial consultants to whom life savings are entrusted.

I learned the hard way that F.I.N.R.A. on the way out of a F.I.N.R.A. proceeding, if the investor wants to get pennies back on their lost dollars sought, seeks expungment of claims against a fiduciary financial consultant who is misled in to the F.I.N.R.A. D.R.S. process.

I learned the hard way that F.I.N.R.A. on the way in to a F.I.N.R.A. D.R.S. proceeding that F.I.N.R.A. requires a confidentiality agreement of the proceedings, a silencer with a penalty if the proceedings "confidence" is violated.

I learned the hard way that F.I.N.R.A. misleads the court of the legal oversight of F.I.N.R.A. Dispute Resolution. One would hope the Courts actually did diligence to read paperwork and do research as to case precedence or correctness. They do not, partially blamed on how burned the courts are with cases. Part of the problem is F.I.N.R.A. is writing its own rules. Let me explain. A recent appellee to the D.C. court showed the court that F.I.N.R.A. says that F.I.N.R.A. D.R.S. is compliant to the F.A.A., the Federal Arbitration Act. The Federal Arbitration Act states it is relevant to Maritime Law. The A.B.A. had not been asked the question before to think about it.

I learned the hard way to think about things like that. As shared with the A.B.A. and others, financial fiduciaries are licensed on state by state, hence should be adjudicated under State Law, under the U.C.C., the Universal Commercial Code that does provide for investment consultant disputes. Financial fiduciaries are not licensed federally.

I learned the hard way that F.I.N.R.A. has distorted Congress' intentions of the Investment Protector Act of 1933. Any and all D.R.S. that F.I.N.R.A. has overseen have hidden crimes by fiduciaries away from law enforcement, FINCEN and Congress.

Congress can get a grasp of those numbers. F.I.N.R.A. won't produce them. Some, not all, F.I.N.R.A. disciplinary actions are locatable here, *http://www.finra.org/industry/disciplinary-actions,* at least until as far back as 1996. The complaints that are expunged, going through the

F.I.N.R.A. process or the ones that F.I.N.R.A. states happened by circumventing the F.I.N.R.A. process, without F.I.N.R.A. knowing, can still be found. There are ways.

Try looking up Bernard Madoff. Madoff was a fiduciary, too. F.I.N.R.A. stated in 2009 that F.I.N.R.A. had no idea of Madoff's crimes. Bernie said "they did." Mr. Madoff told the truth http://www.centerforcopyrightintegrity.com/congress-created-madoff.html *"They knew"* Madoff was selling No Product as far back as 1963.

Problem was and still is that Congress wrote the laws that makes this conversation over *"fiduciary"* moot. Congress set benchmarks of $25,000 and $100,000 of fines along with temporary disbarment for crimes you and I got to jail for, for crimes far greater than the cigarette selling that put Eric Garner *"I cant breathe"* in to the system. Mr. Garner was fingerprinted, had his mug shot taken, was locked up, lost his right to vote, had to check the box when he came out of prison then saw recidivism as his only option to making a living while Madoff and the others that F.I.N.R.A. did not turn in to law enforcement were recidivis, too, stealing from clients until they, too, like Madoff turned themselves in or like Wolf Of Wall Street got caught for something that led to their financial crimes being discovered.

The death of Eric Garner lies on Congress. Cops would rather go after Madoffs than Eric. Congress has a fiduciary to, acknowledging that telling the S.E.C. to send cases to the U.S. Attorney without understand the S.E.C. system is plain dumb.

The S.E.C. like Congress is neutered. Congress and the S.E.C. lack the power to lock thieving fiduciaries up for crimes perpetrated against trusting people. Congress needs cops.

Congress needs to understand the S.E.C. is run like a business. Meetings are held to discuss what case has potential to be sexy and look good in the public eye. Then of those cases, the S.E.C. attorneys are limited with what information they get access to, moreso, when the people that are wronged are under the misbelief that F.I.N.R.A. has weight behind a F.I.N.R.A. award that the Courts, blindly see as binding and authentic when it is not, harming persons that F.I.N.R.A. shut down. Congress needs to get a grasp on what is real in the world.

The legal fiduciary lacks too. One would think lawyers actually dug documents. They don't. Investigators do. Lawyers look at case precedence. As do judges. Lawyers, well, there is that breed that races cases around the country hoping some paper shifting gets a case settled, fast, before on to the next case. The fact is that despite F.I.N.R.A.s website stating lawyers must conform to local rule, F.I.N.R.A. has fanned that falsehood letting lawyers who are not licensed in the local jurisdiction the consumer case against the fiduciary has been assigned to commence interstate communication to argue the matter, possibly settle the matter, all the while not being licensed under local law.

The greater tragedy is that most local bar associations, U.S. attorneys, city attorneys, law enforcement, legislators. etc who all have fiduciary to their residents have never heard of F.I.N.R.A.

The even greater tragedy is that across the country all local securities commissions are misled to believe that F.I.N.R.A. is government not a business league, a private non profit business, the *"New NASD Holding Co."* is how it is described in publicly filed papers.

The greatest tragedy is the team that wrote the Counts up against Madoff did not know of the priors that F.I.N.R.A. had in the F.I.N.R.A. record.

Congress needs to know the waste of the investment of time into parsing "fiduciary" before the crime has happened. Criminals always find, yet another way, to break the laws. Congress needs to invest time into mitigating harm to clients breached by a fiduciary. It is like getting robbed a second time when lawyers and others use the law to keep matters out of the Courts, fingering clients as the bad one, publicly shamed in records. I learned the hard way.

A breached person needs a simpler way to cut through the rabbit holes we are sent through, rules that cannot run more than x pages, rules that are written in simple plain English a 5th grader can read. That is what the fiduciary breacher counts on, the lawyer who wanted quick settlement counts on, the business league the breacher and the lawyer belong to. They count on the supposed safeguards like ethics committees to protect them to. Do you want to know the definition of an ethics committee? It is a .org, a (dot) org, a non profit most likely itself a business league that collects business from its members in order to subsist. The harmed investor/ 401K owner is not their concern nor allegiance.

The fiduciary that needs to be implemented here is not the definition of this word *"fiduciary"* applied only to 401K's but the interpretation of the word *"fiduciary"* as it needs to be reviewed- from the top, Congress, all the way down the food chain to the guy working the register at the corner market. The same fiduciary he owes to his customer is the fiduciary Congress owes to consumer, 401K customer or otherwise.

In a day of ICANN exploding TLD's across the global market, in these days that the internet is facilitating the online crimes the National Association of State Secretaries and the International Securities commission are warning of, abuses ie. .forex, .payday, maybe even .fiduciary, Congress has got to wake up to grasping the problem is not the words some vested lobbyist focused Congress in on. The problem is once the thievery is discovered, how the victim seeks justice. Do away with F.I.N.R.A. and write as the rule change what I tweet, LINKEDIN, and Facebook, people… *"If someone steals your wallet or car you call the cops, so why wouldn't you call the cops if someone (fiduciary) steals your hard earned savings retirement money."*

I am the lady who crossed the political divide to protect others like me and Frank and Eli and Kevin and others daily increasing breached by Fiduciary list,
Carrie Devorah
The Investor Behind Bill H.R. 1098, the Investment Clients Protection Act of 2015

Thank you Congressman Keith Ellison, Thank you Senator Franken

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September 28, 2015

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Dear Chairmen Paul and Roskam and Ranking Members Levin and Lewis:

The Credit Union National Association (CUNA) applauds the House Ways and Means Oversight Subcommittee for holding a hearing to examine the Department of Labor's (DOL) proposed regulation defining a "fiduciary" of an employee benefit plan, which adds brokers and advisers providing advice to Individual Retirement Accounts (IRA) to the definition. CUNA represents America's credit unions and their more than 100 million members.

CUNA supports the broader goal of protecting investors and encouraging all advisors to act in the investor's best interest. After careful review, we believe the rule as proposed may cause more harm than good and leaves credit union members with fewer options and more confusion. As such, we urge Congress to consider how the DOL's proposed rule may affect a consumers' ability to participate in retirement and savings plans. We look forward to the Committees review of the rule as you explore the possible harmful impact the rule may have on the ability of low- and middle-income working American families to invest and save.

Even though in most instances compliance with the DOL's proposed rule should not sit at the credit union level, we have concerns this rule could impact credit unions and their members. Credit unions offering investment services have arrangements with third party brokers in which they clearly outline the duties and responsibilities of each party in the arrangement. The third party offering retirement or IRA services in most situations will be responsible for their own compliance with applicable laws and compliance standards because they sell their products directly and separately to members. However, under the DOL's proposed rule questions remain about whether the proposed rule could sweep in credit unions and their employees because of their interactions with these third parties. Such interactions may occur because credit unions are required to conduct due diligence to ensure any third party arrangement and practice has proper controls in place, and they must have reasonable belief that the third parties' practices are compliant. Due to the rules overly broad scope, we have significant concerns that credit unions could be included into some of the newly proposed requirements. One example of how credit unions could be affected by the rule is if the credit union and a broker dealer share employees.

This is concerning to us because the compliance burdens for those who will qualify as ERISA fiduciaries are significant, and small or medium size credit unions could be hesitant to engage in any activity that may require compliance with this complex and expansive proposed rule. This could preclude credit unions from offering investment services through a third party, which is not in the best interest of credit union members or middle-class families. We urge Congress to examine how the DOL can more narrowly tailor the definition of "investment advice" to ensure that credit union employees, who are only tangentially involved in providing investment services are not covered by the rule.

Dozens of other industries also share our concerns about the proposed rule. This is evident by the four days of hearings at the DOL, the volume of additional information and written testimony submitted after the regular comment period, and the concern other Congressional committees and Members of Congress have expressed. Despite commendable efforts by the DOL to create rules which will improve the consumer experience when investing, it is clear that the strong opposition, fears voiced, and the unanswered questions posed about the proposed rule must be more closely examined and addressed before the agency can move forward with a rulemaking. We appreciate the efforts by Congress and the Oversight Subcommittee to urge DOL to make important changes to its proposed rule before moving forward.

Discouraging Credit Unions from Offering Investment Services is Detrimental to Consumers

While the impact of this rule on financial institutions and their customers or members is only a small part of the debate over this rule, it is significant for the many Americans who look to these institutions for support in learning about retirement and savings options. We urge Congress to consider how credit unions and other financial institutions will be impacted by the rule.

CUNA is particularly concerned about the impact this proposed rule will have on credit unions because they often serve a different demographic than some of the conglomerate investment firms. When providing investment services to their members, credit unions aim to help American families of all means receive information about saving for retirement and planning for their future. While many large investment firms seek high net-worth clients, credit unions seek to provide services to their members in all financial situations to make it easier for these individuals to map out financial plans.

As member based institutions, credit unions strongly agree with the DOL that our members deserve the best possible service when seeking information about retirement plans or IRA distributions. Rules written by any regulatory agency focusing on proper retirement planning of consumers should encourage and promote retirement savings—rather than potentially impeding the ability of credit unions, or other financial institutions, to provide these products and services. As illustrated by hundreds of comments requesting a redraft of the proposed rule and the four days of contentious hearings at the DOL, the rule is full of complexities and unworkable solutions that must be resolved to assure that the very people this rule is intended to help are not inadvertently harmed.

As outlined in our attached comment letter, CUNA encouraged the DOL to examine how the following could negatively affect credit union members' access to retirement and other investment services:

- The overly broad consideration of what is considered "investment advice"
- The overly prescriptive requirements surrounding what constitutes compensation
- The problematic "sellers carve-out"
- How "the Best Interest Contract Exemption" will work at financial institutions.

Regulatory Overlap is Problematic for Credit Unions

The proposed rule creates regulatory overlap in its current form, which was even voiced by other regulators at both the Financial Industry Regulatory Authority (FINRA) and the Securities and Exchange Commission (SEC) in comment letters to the DOL. Credit unions are already supervised by the National Credit Union Administration and the Consumer Financial Protection Bureau if they have $10 billion or more in assets, and state-charted credit unions are regulated at the state level. Furthermore, FINRA and the SEC already require specific licenses and compliance with certain laws for registered brokers, insurance agents, and investment advisors in credit unions. Any additional oversight in this area is unnecessarily duplicative and could be burdensome to credit unions who are already facing a multitude of regulatory hurdles. CUNA believes H.R. 1090, the Retail Investor Protection Act, would be a step in the right direction in alleviating regulatory overlap to assure better collaboration with the SEC.

The responsibilities associated with being an ERISA fiduciary would require expensive and time-consuming compliance training for credit unions, during a time when they are facing an unprecedented number of regulatory burdens. We believe it is important that credit unions are able to offer a full range of products and services to their members, including products to help families save for retirement and other purposes, without being swept into a rule aimed at financial advisors. Any ambiguity and uncertainty in this area could cause financial institutions to exit or not join this market.

The reduction of any unnecessary regulatory hurdles, either intended or unintended, is important for the livelihood of credit unions. Thank you again for holding this hearing, and considering CUNA's concerns.

Sincerely,

Jim Nussle
President & CEO

Testimony of Catherine Weatherford

President and CEO, Insured Retirement Institute

Hearing on “Department of Labor’s Proposed Fiduciary Rule”

House Ways & Means Subcommittee on Oversight

U.S. House of Representatives

September 30, 2015

On behalf of the Insured Retirement Institute (IRI), I welcome the opportunity to submit written testimony to the members of the House Ways & Means Subcommittee on Oversight for the hearing titled "Department of Labor's Proposed Fiduciary Rule." We thank the subcommittee for examining the U.S. Department of Labor's (DOL's) proposed fiduciary rule and its consequences for retail investors and retirement savers, especially those who are young and just beginning to save for their retirement, as well as its potential impact on our nation's economy. In particular, we are concerned the DOL's proposal will limit consumers' choices and access to beneficial financial products such as annuities.

IRI is the only national trade association that represents the entire supply chain of the retirement income industry. IRI has more than 500 member companies, including major life insurance companies, broker-dealers, banks, and asset management companies. IRI member companies account for more than 95% of annuity assets in the United States, include the top 10 distributors of annuities ranked by assets under management, and are represented by more than 150,000 financial professionals serving over 22.5 million households in communities across the country. IRI and its members therefore represent not only their own views, but also those of their clients on Main Streets across America. As such, IRI is uniquely positioned to comment on the implications of the proposal for manufacturers, distributors and consumers of annuity products that provide guaranteed lifetime income.

As Americans are living longer and facing greater obstacles to saving for retirement, the role of guaranteed investment products in helping consumers achieve a financially secure retirement has never been more important. Annuities are the only financial products that guarantee lifetime income throughout retirement. Considering the retirement reality in America – defined by the unsure footing of Social Security and the near disappearance of pension plans – it is clear that Americans planning for retirement must have a second form of guaranteed retirement income.

IRI and our members support a best interest standard for financial professionals who provide personalized advice or recommendations to plans, plan participants and beneficiaries, and IRA holders. We believe the vast majority of financial professionals already act in their clients' best interest, and recent IRI research found that nearly all consumers agree. The proposal, however, would impose unworkable requirements that would significantly impair the ability of most Americans to prepare for a financially secure retirement. In this testimony, I will first discuss how the proposal could make it harder for Millennials to prepare for retirement, before describing the issues we have identified with the proposal more broadly and the changes we have requested that the DOL make to the proposal to address those issues.

<u>Impact of the DOL Proposal on Millennials</u>

While the proposal would harm all retirement savers, the public debate on this issue to date has been primarily focused on retirees and pre-retirees. We are also concerned, however, about the proposal's impact on Millennials, who are now the largest generation in the U.S. workforce. IRI and the Center for Generational Kinetics (CGK) released a new research report this week on the retirement outlook of the Millennial generation. The report is based on a study conducted in August 2015 through a survey of 1,110 Americans aged 18 to 65, with a 10 percent oversample of Millennials, ages 20 to 37. A copy of the research report has been submitted into the hearing record by Congressman Jason Smith (R-Mo.).

The study debunks the myth that Millennials are not thinking about retirement, but also confirms the perception that Millennials are not doing enough to prepare for a financially secure retirement. The study found that, while 68 percent of Millennials say they are saving for retirement and 48 percent have a 401(k)-type retirement plan, only 29 percent are actively planning for retirement. Debt reduction was the most frequently cited step Millennials are taking to prepare for retirement, with 77 percent of Millennials trying to reduce their debt. While this is a positive step, Millennials clearly need help right-setting expectations, determining goals, and building financial plans. Unfortunately, by effectively banning the commission-based brokerage model that currently serves Americans with small to moderate savings, the DOL proposal will deprive Millennials of access to this much-needed and much-wanted financial assistance.

The study also showed that Millennials want this help, with 62 percent expressing a desire to have an advisor to walk them through every step of the retirement planning process, 87 percent said it is important that an advisor be willing to meet them in person, and only 19 percent are likely to use a robo-advisor, which Labor Secretary Thomas Perez has often touted as an alternative to human advisors. Based on this study, it is clear that Millennials – arguably the generation most comfortable with new technology – recognize and value the personal attention only a human advisor can provide, and are not prepared to entrust their financial planning needs to a website.

Other key findings from the report include the following:

- More than a quarter of Millennials are banking on either winning the lottery or receiving gifted money to fund their retirement years – 15 percent and 11 percent, respectively.

- When it comes to expenditures in retirement, 70 percent of Millennials think they will spend less than $36,000 per year – 30 percent less than the current national average, $46,757, for those aged 65 to 74.

- The majority of Millennials, 56 percent, believe they will not be able to retire when they want to, with half this group thinking they will never be able to fully retire.

- About half of Millennials, 48 percent, would pick Warren Buffett to be their financial advisor, and 32 percent would choose Oprah Winfrey. By contrast, 77 percent of

Boomers selected Buffett and 15 percent picked Winfrey.

- Half of Millennials believe they will be financially supporting their parents as they age.
- Millennials are more likely than Boomers and Generation Xers to cut off their children financially at age 18.

IRI's Requested Changes to the Proposal

As noted above, IRI and its members believe the proposal will deprive consumers of access to valuable financial assistance and guaranteed lifetime income products designed to help them achieve their goals. We explained these concerns in discussions with the DOL and in our public comments and testimony[1], and provided DOL with specific language to address these concerns and make the proposal workable. The following is an overview of IRI's requested changes:

Changes to Definition of "Fiduciary" and Carve-Outs

1. The definition of "fiduciary" should apply only when there is a "call to action" by the adviser, consistent with the approach taken under FINRA rules.
2. New carve-outs should be provided for (i) recommendations where there can be no reasonable expectation that the adviser is providing unbiased and impartial advice; and (ii) companies that issue annuities, insurance or investment products but do not provide investment advice about their products or represent themselves as fiduciaries.
3. The "seller's exception" should be available for recommendations to plans of all sizes, as well as individual plan participants, beneficiaries and IRA owners.
4. The platform provider carve-out should apply to IRAs and annuities.
5. The investment education carve-out should permit advisers to identify specific investment options in connection with asset allocation models.

Changes to Best Interest Contract Exemption and PTE 84-24

1. Sales of variable annuities to IRAs should be restored to the scope of the existing prohibited transaction exemption (PTE) for insurance and annuity products (known as PTE 84-24).

[1] IRI submitted written comments to the DOL on July 21 and September 24, provided oral testimony during the DOL's public hearing on the proposal on August 10 and August 11, submitted written testimony in connection with the DOL's public hearing on August 17, and submitted written testimony for the record for a joint hearing held by two subcommittees of the House Financial Services Committee on September 10.

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2. “Best Interest” should be defined, under both the proposed “Best Interest Contract” exemption (the BIC exemption) and PTE 84-24, to make clear that advisers and firms must always put their clients’ interests first, but would not be required to completely disregard their own legitimate business interests and would be permitted to continue receiving commissions.

3. Commission-based compensation and other standard and customary compensation practices should be expressly permitted under the BIC exemption.

4. “Insurance Commission” should be more broadly defined, under both the BIC exemption and PTE 84-24, to ensure that advisers are not inadvertently prohibited from receiving customary employee benefits.

5. Consistent with the approach taken in PTE 84-24, the “reasonable compensation” standard under the BIC exemption should consider both the value of services and the costs of the guarantees, benefits and other features provided by the product.

6. The “best interest” and “reasonable compensation” provisions would provide effective consumer protection, the warranties required under the BIC exemption, including the warranty limiting the use of incentives and differential compensation, serve no useful consumer purpose but create significant litigation risk for advisers and firms, and should therefore be removed.

7. Selling proprietary or a limited range of products should be expressly permitted under the BIC exemption. The additional conditions included in the proposal for advisers who sell proprietary or a limited range of products would significantly impair the viability of this valuable business model but provide no additional consumer protection, and should therefore be removed.

8. The exceedingly burdensome and expensive point of sale, website and annual disclosure requirements should be replaced with disclosure regimes already in place under existing DOL, SEC and state insurance rules.

9. The BIC exemption should not require that clients sign a “best interest contract” so long as the adviser and the firm make a legally binding commitment to act in their clients’ best interest before executing any recommended transaction.

10. The BIC exemption should include a mechanism to enable fiduciaries to correct inadvertent failures to comply with the conditions of the exemption.

11. All of the conditions applicable to variable annuities under the BIC exemption should be consolidated in a separate section of the exemption.

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12. The proposal should provide meaningful grandfathering relief for (a) “sell” or “hold” recommendations and owner-initiated transactions with respect to annuities issued under current rules, and (b) transactions based on recommendations made prior to the effective date of the final rule.

Administrative and Procedural Issues

1. The proposed eight-month implementation period should be extended to three years to provide adequate time to develop the necessary compliance processes.

2. The DOL should revise its Regulatory Impact Analysis to include consideration of (a) the proposal’s impact on the variable annuity industry and its customers, and (b) the impact on the capital markets and the potential systemic risk to the national economy if the proposal results in an overconcentration of retirement savings in passively managed index funds.

3. The DOL should publish a revised version of the proposal for public comment before finalizing the rule to ensure its changes sufficiently address the legitimate concerns raised by IRI and others.

* * * * *

Thank you for the opportunity to share our views and new research. IRI would welcome the opportunity to provide any additional information, assistance or to further discuss these issues with members of the subcommittee.

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NFIB

The Voice of Small Business.®

September 30, 2015

Chairman Roskam, Ranking Member Lewis, and members of the Ways and Means Subcommittee on Oversight, thank you for the opportunity to provide a statement for the record on the hearing on the Department of Labor's Proposed Fiduciary Rule. The National Federation of Independent Business (NFIB) is the nation's leading small-business advocacy organization, representing small-business owners across the country.

On July 21, 2015, NFIB submitted comments to the Employee Benefits Security Administration (EBSA) in response to the notice of proposed rulemaking for the "Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice."

NFIB believes that the proposed fiduciary rule will have a substantial impact on small businesses. Our concerns are outlined in the attached comment letter, which we are submitting for the record.

NFIB
The Voice of Small Business.

July 21, 2015

Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: RIN 1210–AB32 – "Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice" and associated proposed exemptions

These comments are submitted for the record to the Employee Benefits Security Administration (EBSA) on behalf of the National Federation of Independent Business (NFIB) in response to the notice of proposed rulemaking for the "Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice" and associated proposed exemptions (proposed rules) published in the April 20, 2015 edition of the *Federal Register*.

NFIB is the nation's leading small business advocacy association, representing members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents about 350,000 independent business owners who are located throughout the United States.

NFIB believes that these proposals are likely to have a substantial impact on small businesses. We are concerned that the changes to the definition of fiduciary could substantially transform the way in which financial service providers deliver services to small businesses and their employees. This could result in providers no longer being able to offer these services to small businesses in an affordable manner. Consequently, it is the employees of these small businesses – the very individuals these rules purport to benefit – that stand to lose access to retirement benefits. In addition, if small businesses cannot offer retirement benefits they will be less competitive with larger businesses, thus hurting innovation and job opportunities for everyone.

Why small businesses need access to affordable retirement plans

NFIB believes that simplification of the regulations and reduction in the costs associated with retirement plans are important to American small business. For small businesses, employee benefit decisions are based on two principles: 1) what can the business afford, and 2) what do the employees want. The point is simple: employee benefits are not free.

If the business can afford the expense of a retirement plan, small business owners have a variety of reasons to offer one. These reasons include: providing their employees with an opportunity to save for retirement, attracting quality employees, instilling worker loyalty and encouragement to stay with the business, rewarding successful employees, and taking advantage of the tax deductions retirement plans offer.

For a small business owner considering whether to offer a retirement plan, the primary threshold that must be crossed is whether or not the business can afford the administrative costs of the plan. And for small businesses, the administrative and start-up costs of a retirement plan are disproportionately higher than they are for larger businesses.

A 2005 study from the U.S. Small Business Administration's Office of Advocacy (Office of Advocacy) found that the administrative cost per participant in retirement plans increased considerably for smaller businesses when compared to their larger counterparts[i]. For example, for companies with more than 500 employees that offered defined contribution plans, the administrative cost of offering a retirement plan ranged from approximately \$30 to \$50 per participant. However, for companies with fewer than 50 employees, the administrative costs ranged from \$106 to \$439. As the study notes:

> "There appears to be a rough minimum of administrative costs for [retirement] plans. The average total payment of administrative costs is nearly the same for companies with five and fewer employees as it is for companies with 6-10 employees and is only slightly higher for companies with up to 50 employees."

These higher relative administrative costs are a significant contributing factor in fewer small businesses offering retirement plans. According to the most recent data available from the NFIB Research Foundation, 27 percent of small businesses offer retirement plans[ii]. This is consistent with the offer rate identified by the Office of Advocacy[iii]. In contrast, for larger firms, only 26 percent of workers do *not* report having a retirement plan available to them[iv].

For small employers seeking to attract talented employees to work at their companies, this inherent disparity places small business owners at a competitive disadvantage relative to their larger competitors. Historically, Congress sought to address these disparities in part by creating the Simplified Employee Pension Individual Retirement Accounts (SEP IRAs) and Savings Incentive Match Plan for Employees (SIMPLE) IRAs. NFIB supported the creation of these types of retirement plans because they offer a simpler and more affordable alternative to other retirement plans, such as 401(k) plans, which require additional administrative requirements and regulatory complexity.

These plans are popular with small businesses that offer retirement benefits. Subsequent questions from the NFIB Research Foundation survey found that 40 percent of those with plans offered 401(k) plans, while 41 percent offered either a SIMPLE or SEP IRA (30 percent and 11 percent, respectively).

With about as many small businesses offering SIMPLE or SEP IRAs as 401(k) plans, any changes to the regulatory code that make SIMPLE or SEP IRAs more difficult and costly to offer makes it increasingly likely that these small businesses will drop retirement benefits altogether – thus making it more difficult for employees to save for retirement and more difficult for small businesses to attract the skilled, talented employees they need to grow.

Small business owners wear many hats at their business. According to an *NFIB National Small Business Poll on Business Structure*, 87.5 percent of all small employers do not have at least one employee (excluding the owner) whose only job is personnel or human resources[v], and according to an *NFIB National Small Business Poll on Time Allocation*, 68 percent do not employ a chief financial officer, or the equivalent, someone largely responsible for handling the firm's budget and/or books[vi]. A small business owner's time is his or her most valuable resource, and every additional hour that a small business owner has to spend complying with new benefit regulations is one hour less that they have to spend on growing their business.

NFIB believes the proposed rules will add cost and burden to these plans, for the reasons set forth below.

Proposed rules will limit the ability of small businesses to offer retirement plans

The EBSA's goal with the proposed rules is laudable. The agency seeks to reduce conflicts of interest for financial service providers that lead them to offer products with higher fees that may not be the best fit for the client. As part of this effort, the proposed rules include a revised definition of "fiduciary" status, which triggers certain prohibited transactions. In addition, the proposed rules expand fiduciary status regarding numerous products beyond traditional 401(k) plans. According to the *Federal Register* notice, "[i]f adopted, the proposal would treat persons who provide investment advice or recommendations to an employee benefit plan, plan fiduciary, plan participant or beneficiary, IRA, or IRA owner as fiduciaries under ERISA and the Code in a wider array of advice relationships than the existing ERISA and Code regulations, which would be replaced."

While 401(k) plans are the most popular among small businesses that offer retirement plans, many more find them too expensive and burdensome to offer. Therefore, SIMPLE and SEP IRAs present a more affordable and easier alternative. It is critical that EBSA preserves the viability of these lower cost options. However, this expansive proposal will likely lead to SIMPLE and SEP IRAs being more costly to offer, either in terms of the owner spending more money on setting up the benefit, or in the amount of time a small business owner will spend on setting up the benefit. It is likely that a small business chose to offer a retirement plan because of the lower effort levels required to provide SIMPLE and SEP IRAs. Making these plans more costly to offer will lead to small businesses dropping plans altogether, rather than continuing to use IRAs or converting to 401(k) plans.

Additionally, the proposed rules would make these IRAs more costly for financial professionals to provide for small businesses and increases the likelihood that these providers avoid the small business market. The proposed rules would effectively prohibit providers from offering products to small businesses on which they earn variable compensation or sell products with which they have an affiliation, which is common in the SIMPLE and SEP IRA markets. In addition, even offering a small business a general list of investment products available would be considered by EBSA to be beyond basic information and instead treated as a sales pitch, which would be considered a prohibited activity.

Financial service providers may get around some of these prohibitions with the proposed "best interest contract exemption." However, there are two problems with this proposal. First, it is not clear if this exemption actually applies to SIMPLE and SEP IRAs, or if they only apply to individual IRAs. Second, the requirements of the exemption still impose considerable costs on the broker, which acts as a disincentive for brokers to offer services to small businesses. Accordingly, we have heard from large and small providers alike, including NFIB members, that the exemption is generally unworkable.

This situation is made worse by the "carve out" available to those selling plans to businesses with 100 or more participants. Providers are not prohibited from offering products to these larger plans. The reason is because EBSA believes that larger plans have more sophisticated benefits personnel and can therefore distinguish between general information and a sales pitch. Because smaller plans cannot make that distinction – in EBSA's opinion – small businesses cannot benefit from the exemption. This makes it all the more likely providers will not bother to offer services to small businesses.

In addition to the challenges the proposed rules present to SIMPLE and SEP IRAs, 401(k) plans will also be affected because of the expansion of activities that will now be considered fiduciary in nature, and accordingly, prohibited if fees are paid to providers based on which products are purchased. In the preponderance of cases, the amount of money made by the provider varies depending on what options a small business owner chooses.

Under the proposed rules, if a provider were contacted by a small business owner about potentially setting up a 401(k) or IRA plan for employees, that provider would not even be able to identify a list of a dozen or so investment options that are typical for the industry that small business is in. This is because the proposed rules treat this activity as actual investment advice rather than education.

The circumstance presented above leaves the small business owner in an unpleasant situation. He or she must choose one of two bad options. The first is that the owner would have to select the investment options him or herself. Not only is the owner likely not expert enough to do this well, but by doing so he or she takes on additional liability. ERISA holds fiduciaries to an expert standard, and if he or she is not an expert, then he or she must seek help from one. This leads to the second poor option, which is to search for and retain a qualified independent third party expert to do the selection for a fee.

Neither of these options would be viable for many small businesses. Therefore, the proposed rules would make it exceedingly likely that numerous small companies would forego offering a retirement plan altogether, rather than subject their business to the expensive, complicated, and stressful elements of offering a retirement plan.

The EBSA should not be taking action that reduces the number of small businesses that will be able to offer retirement benefits. According to the Office of Advocacy, small businesses employ about half of all of U.S. private sector employees[vii]. Restricting the ability of these employers to offer a plan to employees would mean large numbers of employees would no longer have access to a retirement plan at work.

Proposed rules are an example of the need for small business regulatory reform

NFIB believes that these proposed rules demonstrate the need to reform the Regulatory Flexibility Act and its amending laws. Currently, agencies are required to perform an initial regulatory flexibility analysis prior to proposing a rule that will have a significant economic impact on a substantial number of small entities. While these analyses are helpful for agencies to realize the cost and impact a proposed rule will have on small business, agencies would get additional benefit from convening a Small Business Advocacy Review panel for rules of significant impact. These panels allow an agency to walk through a potential proposal with small business owners, either in person or via telephone, and receive feedback and other input from those who will be directly impacted by the regulation. These panels are currently required for the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Consumer Financial Protection Bureau. NFIB believes all agencies – in particular the entire Department of Labor – would achieve better regulatory outcomes if required to go through such a procedure.

In this case, EBSA would have benefitted from asking small businesses that offer, or would like to offer, retirement plans how these proposed rules would impact their ability to do so. Perhaps if this was the case, the agency would have crafted proposed rules that better achieve the agency's goal of protecting investors – rather than create regulatory hurdles that will likely reduce the number of small business employees that have access to a retirement plan.

Conclusion

NFIB believes that these proposals are likely to have a substantial impact on small businesses. We are concerned that the changes to the definition of fiduciary could substantially transform the way in which financial service providers deliver services to small businesses and their employees. The result is likely to be that these advisors and providers are no longer able to offer these services to small businesses in an affordable manner. Consequently, it is the employees of these small businesses – the very individuals these rules purport to benefit – that stand to lose access to retirement benefits. In addition, if small businesses cannot offer retirement benefits they will be less competitive with larger businesses, thus hurting innovation and job opportunities for everyone.

NFIB appreciates the opportunity to comment on the proposed rules. Should EBSA require additional information, please contact NFIB's senior manager of regulatory policy, Dan Bosch, at 202-314-2052; or senior manager of legislative affairs, Matt Turkstra, at 202-314-2034.

Sincerely,

Amanda Austin

Amanda Austin
Vice President, Public Policy
NFIB

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[i] Joel Popkin and Company. *Cost of Employee Benefits in Small and Large Businesses*. 2005. SBA Office of Advocacy.
[ii] Dennis, William J., Jr. *NFIB National Small Business Poll: Payroll*. 2006. NFIB Research Foundation.
[iii] Kobe, Kathryn. *Small Business Retirement Plan Availability and Worker Participation*. 2009. SBA Office of Advocacy.
[iv] *Ibid.*
[v] Dennis, William J., Jr. *NFIB National Small Business Poll: Business Structure*. 2004. NFIB Research Foundation.
[vi] Dennis, William J., Jr. *NFIB National Small Business Poll: Time Allocation*. 2012. NFIB Research Foundation.
[vii] https://www.sba.gov/sites/default/files/sbfaq.pdf

Financial Security...for Life.

Statement for the Record
Committee on Ways and Means
Subcommittee on Oversight
Hearing on "the Department of Labor's Proposed Fiduciary Rule."

September 30, 2015

The American Council of Life Insurers (ACLI) is pleased to submit this statement for the hearing record regarding the Department of Labor's (DOL) fiduciary rulemaking efforts. We thank Subcommittee Chairman Peter Roskam and Ranking Member John Lewis for holding this important hearing.

On behalf of the U.S. life insurance industry, we share the President's view that "retirement advisers should put the best interests of their clients above their own financial interests." In pursuit of this objective, however, the DOL has proposed a rule that will restrict activities that encourage low-to moderate-income Americans to save, stifle the formation of small business workplace benefit plans, and won't assist savers and retirees with securing guaranteed lifetime income throughout retirement.

The ACLI is a Washington, D.C.- based trade association with more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. Its members represent more than 90 percent of the assets and premiums of the U.S. life insurance and annuity industry. In addition to life insurance, annuities, long-term care, and disability income insurance, ACLI member companies offer insurance contracts and investment products and services to employment-based retirement plans including defined benefit pension plans, 401(k), SIMPLE, SEP, 403(b), and 457(b) plans and to individuals through individual retirement accounts (IRAs) and annuities. Our members also are employer sponsors of retirement plans for their employees. As service and product providers, as well as employer sponsors, life insurers believe that savings for retirement, managing assets throughout retirement, and utilizing financial protection products are all critical to Americans' retirement income and financial security.

In September 2011, the DOL withdrew its first proposal to allow additional time for stakeholder input. Almost 200 House and Senate bipartisan Members of Congress had urged the DOL to coordinate rulemaking with the Securities and Exchange Commission (SEC), provide a robust economic analysis, and provide workable prohibited transaction exemptions (PTEs). On April 20th, the DOL proposed a new rule. Unfortunately, this newly proposed rule goes even further than the initial proposal and is supported by an inadequate and flawed economic analysis. The new proposal severely narrows the scope of existing PTEs that have provided workers with access to a retirement savings account and invaluable retirement planning assistance. It proposes a new PTE that, absent significant changes, is not workable.

ACLI submitted a comment letter to the DOL on July 21, 2015, in time for the first comment period. At the same time, over 2,000 other responses were received by the Department. ACLI had also participated in the recent public hearings held by DOL on the proposal in August and reiterated these concerns. On September 24th, ACLI submitted a supplemental letter, which responds to a number of questions our representatives received during the public hearing.

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As leading providers in the small plan formation marketplace, life insurers are concerned that this proposal would impede the important policy goal of expanding small plan coverage. The proposal negatively impacts small plan formation by restricting sales activities that encourage small business owners (with 100 employees or fewer) to start, maintain, or improve their employee benefit plans. The DOL has limited the "sales exception" to exempt certain large plans, while impeding the sales of products and services to small businesses. According to the U.S. Chamber of Commerce, 99% of U.S. employers are small businesses, and they produce 63% of new private sector jobs. The proposal would adversely affect how small businesses can offer 401(k)s and IRAs to their employees – impacting millions of Americans' retirement security. Growing stress on government programs adds to the need for greater incentives for these small businesses to start and maintain retirement plans—not new barriers.

The proposal also would place limits on education activities designed to assist savers with asset allocation and retirement planning. It treats educational materials as "recommendations" if they include references to specific investment products, investment alternatives, or distribution options – including annuities available under a plan or IRA.

Finally, the proposal would likely result in fewer commission-based services in the marketplace, leaving only fee-based and managed account services. Many low and middle income savers access education and information on ways to save for retirement and manage income in retirement through transactional, commission-based services. While fee-based and managed account services may make sense for upper income investors, such services may not make sense for buy and hold investors or those seeking information, education, or advice regarding guaranteed lifetime income through annuities. The DOL claims to provide for commission services through the proposal's "Best Interest Contract Exemption." Unfortunately, the exemption provides no clear path to compliance and would increase legal exposure, the potential for class action lawsuits, and excise taxes. This risk will add to the cost or, more likely, limit the availability of transactional commission-based services.

ACLI would like to thank the Members of the Committee for sharing their concerns about this proposal with the DOL and hope that we can all work together to ensure a durable rule that will not negatively impact individuals, plan formation or the current marketplace for investment education and advice. ACLI would also like to thank members of this Subcommittee, as well as members of the full Committee, that have signed onto letters or otherwise engaged the DOL with regard to stakeholders concerns about the complexities of the proposal . Specifically, we would like to thank Representatives Sam Johnson (R-TX), Kevin Brady (R-TX), Devin Nunes (R-CA), Pat Tiberi (R-OH), Dave Reichert (R-WA), Charles Boustany (R-LA), Peter Roskam (R-IL), Lynn Jenkins (R-KS), Erik Paulsen (R-MN), Kenny Marchant (R-TX), Diane Black (R-TN), Mike Kelly (R-PA), Jim Renacci (R-OH), Pat Meehan (R-PA), Kristi Noem (R-SD), Jason Smith (R-MO), Bod Dold (R-IL), Charles Rangel (D-NY), Richard Neal (D-MA), Mike Thompson (D-CA), John Larson (D-CT), Earl Blumenauer (D-OR), Ron Kind (D-WI), Bill Pascrell (D-NJ), Joseph Crowley (D-NY) and Linda Sanchez (D-CA).

Life insurers are at the forefront of helping people save for retirements that may last decades and providing guaranteed lifetime income that supplements Social Security. Many people first learn of the benefits of annuities and other guaranteed lifetime income products from a life insurance agent or broker. Rollovers provide retirees a way to ensure guaranteed lifetime income with their retirement savings. Unfortunately, today, too few defined contribution plans offer retiring workers an annuity option. We appreciate and support the Administration's initiative that began in 2009 to highlight the importance of guaranteed lifetime income and address regulatory barriers that prevent greater access to lifetime income products for workers.

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Let’s continue to work together to expand access to plans, increase retirement savings and education, and facilitate guaranteed lifetime income. The Administration should take a common sense and fair approach, make the substantive changes it claims it will, then issue a proposal that the public can review and comment on before issuing a final regulation. Changes are sorely needed to avoid leaving low- and moderate-income Americans without the education and the advice they want and need. We urge the Administration and Congress to support the following principles to achieve a workable rule:

- A broadly applicable best interest standard based on the DOL’s proposal, under which advice provided by financial professionals regarding investments, distributions, and rollovers would be required to be in the best interest of their ERISA plan and IRA customers.

- A workable prohibited transaction exemption under which financial professionals would be permitted to provide investment, distribution, and rollover assistance as long as the assistance is in their customer’s best interest and the financial professional’s financial incentives are fully disclosed.

- A seller’s exception based on the DOL’s 2010 proposal under which financial professionals would not be considered fiduciaries if they make it clear that they are selling products or services and not advising an investor.

- A new rule that preserves the current-law rules regarding investment education and, as under the current DOL proposal, extends the education rules to education provided to plan sponsors and IRA owners, and to education regarding distributions and rollovers. Unlike the 2010 DOL proposal, the 2015 DOL proposal would substantially restrict the types of investment education that can be provided without triggering potential fiduciary liability.

We hope to be a partner to the Administration and Congress as we all work toward a common goal—providing financial security and peace of mind for American families.

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