Hearing on the Department of Labor's Proposed Fiduciary Rule

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

September 30, 2015

SERIAL 114-OS07

Printed for the use of the Committee on Ways and Means

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Hearing on the Department of Labor's Proposed Fiduciary Rule

U.S. House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room 1100, Longworth House Office Building, Hon. Peter Roskam [chairman of the subcommittee] presiding.

Chairman Roskam. The hearing will come to order.

Welcome to the Ways and Means Oversight Subcommittee hearing on the Department of Labor's fiduciary rule proposal.

I know that everyone on this dais agrees that, given all the economic challenges of our economy, saving for a secure retirement is more important than ever.

Last April, the Department of Labor issued a proposed rule that would drastically expand the definition of a fiduciary. The administration says this is a regulation that will protect people from bad financial advice, and, while that is a good thought and an objective that we can all support, but you know what they say: The road to hell is paved with good intentions.

The reality is that this regulation would prevent many people from getting any investment advice at all because the rule would essentially hold anyone giving retirement advice of any kind to the standards of a fiduciary, with all of the legal implications and the complexity that that entails. The reason we don't have such a standard right now is because it would make it extremely difficult for people to access financial advice without having to pay costly fees.

Small businesses, low- and middle-income families, and underserved communities would be hurt by this rule far more than the wealthy. That is because the majority of small investors use financial advisors called broker-dealers, who typically work on a commission basis instead of charging fixed fees up front. Brokers are a major provider of retirement and investment advice. Although they are not considered fiduciaries, they are held to a high standard which requires them to provide advice that is suitable for their clients' financial interests.

A broker's compensation is based on the number of people they enroll, a commission-centric model that the administration opposes. The administration thinks that a salesperson selling an

investment product has an inherent conflict of interest that harms an individual receiving their advice in considering whether or not to buy their product. However, commission-based retirement investments can often be the best option for many people. They offer a wide variety of investment choices, and, since brokers are paid on a commission, the investors don't have to pay hefty fees up front in order to access those products.

This type of investment advice is so popular that if you look at individual retirement account investors with less than $25,000 in savings, 98 percent choose to go through a broker-dealer. It is sort of the same approach as we take with contingent fees in personal injury cases. We don't make someone hire a lawyer on an hourly basis. There is a contingent-fee arrangement that is also acceptable to both sides and has proved to be successful.

Under the proposed fiduciary rule, commission-based plans would be virtually eliminated. There is an exception if the advisors and their clients enter into a so-called best-interest contract, but this adds a layer of complexity for individual investors and creates a legal and financial liability for investment advisors that will have serious consequences on access to competent and affordable financial advice.

Consequently, if the fiduciary rule is implemented, small investors will have two choices.

The first choice, which the administration is encouraging, is using automated computer programs to invest. I mean, spare me. This may work for some, but many people want to talk to a real person and get individualized advice on how to invest their hard-earned money. A computer program is a poor substitute for a qualified financial advisor who can understand a person's unique circumstances and personal financial goals and provide in-person advice.

The second choice under the rule would be a fee-based model, where the investor would be responsible for paying set fees for financial advice. These fees can be significant, and even a 1-percent fee adds up quickly if it is charged every year. It gets worse. The smaller the account, the higher the fees. And if the rule is implemented, millions of people who are currently commission-based accounts, they would have to start paying fees to get the same type of financial advice they currently get for free.

In putting forward this fiduciary rule, the White House is relying on a study by the White House Council of Economic Advisers, which claims that the conflicts of interest in retirement advice result in 1-percent losses for investors each year, or $17 billion in lost investment earnings annually.

However, expert review shows this study is fundamentally flawed. For example, the study assumes that broker-sold funds are underperforming when, in fact, the data suggests that they outperform similar funds. The White House study also doesn't consider the fact that retirement advice may actually be helpful and increase the value of an investor's retirement savings, a severe analytical flaw that runs contrary to just plain common sense. For helpful advice, the study calculates no financial benefit.

The Investment Company Institute, which has a representative present that will testify today, estimates that the fiduciary rule would actually result in investors losing more than $100 billion over a 10-year period because of increased fees and lower returns on their savings.

One grave concern I have heard over and over again from my constituents is that the administration's objective is to force Americans out of private-sector IRAs and 401(k)s, which are generally working very well under current law, and into retirement plans controlled by the government. This administration's own regulations, as well as public comments, have made it clear that they don't want Americans to have that much control over how to invest, which investments to choose, and when to draw down their accounts.

In the same speeches and press releases touting the fiduciary rule, the administration is boasting that it will soon create new Federal rules allowing State and local governments to create so-called "Secure Choice pensions," run by government officials with a mandate for private-sector employers to enroll their employees.

I say this "so-called Secure Choice" on purpose because I am from Illinois. Under these plans, workers would be promised pensions at retirement, but they would lose them if the government officials running the plan weren't able to meet the investment returns they promised. And that is not just a hypothetical. After years of unrealistic projections and underfunding, pensions in Illinois and in States all across the country are in crisis.

Given the extent of the mismanagement and underfunding of existing public pension plans, which are underfunded by some $4 trillion, I can't think of a better way to undermine the retirement security of Americans than to push them out of the private sector and into government-run public pension plans that are absolutely failing working families today.

The administration claims that the fiduciary rule is necessary to save and protect small businesses and families from bad advice and the big, bad financial industry. Yet, most people who are saving for their retirement are pretty happy with the choices they have right now on access to investment advice.

I would argue instead that the fiduciary rule puts the government in the driver's seat, allowing bureaucrats to pick and choose how people invest their paychecks. What we should really be focusing on in this whole situation are on Americans who aren't saving for a secure retirement adequately or aren't saving for retirement at all. We should be doing everything we can to encourage savings for the future, not passing regulations that make it harder for people to do so.

And despite the fact that the Department of Labor received almost 3,000 comments during the rule's notice period, the administration has decided to move forward without issuing a pre-proposal to address those concerns. That is a problem. In fact, literally hundreds of Members of Congress, across the entire ideological spectrum, from both sides of the aisle, have gone on the record to express deep concerns about the rule. Yet the Department of Labor has chosen to move forward with impunity.

The current rule is unworkable, and the administration has done nothing to fix it. The American people, through Congress, have delegated rulemaking authority to the executive branch, and we will exercise vigorous oversight where necessary in order to make sure that this is not abused.

I was reading through the comments the Department of Labor received on the fiduciary rule proposal from industries, small businesses, and small investors, and I would like to end my statement with one of the comments that stood out to me, submitted by Dorothy Coleman from Hockley, Texas. She wrote, "It is my money. I was smart enough to save it, and I am smart enough to know how to spend it or save it in my retirement." If only the administration agreed.

I would like to recognize Mr. Lewis for his opening statement.

Mr. Lewis. Thank you very much, Mr. Chairman, for holding this hearing.

Today's topic is very important to millions of Americans who are saving for their retirement. Over the last 40 years, retirement plans have changed. Today, fewer Americans are covered by traditional pension plans, and many are covered by a defined contribution plan, like Individual Retirement Accounts, IRAs, and 401(k)s.

These plans often require employees to make three decisions. First, the employee must decide how much to save. Second, the employee must decide where to invest his or her savings. And, third, the employee must manage the payouts from the plan during retirement. An employee might also need to weigh the merits of a lump-sum distribution option.

Now, these are not easy decisions. A person's retirement is at stake. For help, Americans rely on the advice of retirement industry professionals to make the best decision.

Now, the Department of Labor recently issued a proposed rule designed to ensure that consumers receive conflict-free advice from their retirement advisor. However, the rule also would affect the longstanding way advisors are paid. The rule is controversial and has been the subject of thousands of comments.

We must do all we can, Mr. Chairman, to help American families save for their retirement. And, this morning, I look forward to hearing more about why the rule is important and whether changes should be made to the proposal so that it works as intended.

Again, I thank the chairman for holding today's hearing. And, with that, Mr. Chairman, I yield back.

Chairman Roskam. Thank you, Mr. Lewis.

Today we will hear from a panel comprised of industry experts, financial advisors, and small businesses: Bradford Campbell, counsel of Drinker Biddle & Reath; Paul Schott Stevens, president and CEO of Investment Company Institute; Judy VanArsdale from Lake Zurich, Illinois -- just saying -- financial advisor to enRich Private Wealth Management; Kenneth Specht, financial services professional, agent at New York Life Insurance Company; Patricia

Owen, president of FACES DaySpa; and Damon Silvers, director of policy and special counsel at AFL-CIO.

Thank you all for your time today.

I think we are going to do some good work today on this subcommittee. The premise of the subcommittee is that we might need to pump the brakes a little bit on this rule and hear from people with some experience and depth.

You know how this works. We will hear from each of you. We have your written testimony already. You each have 5 minutes. Red, yellow, green are the clues. If I have to explain that further, it is hopeless. If you can stay within the 5 minutes, then we can get to questions and answers and have a better discussion all the way around.

So, Mr. Campbell, you are recognized for 5 minutes.

STATEMENT OF BRADFORD CAMPBELL, COUNSEL, DRINKER BIDDLE & REATH LLP

Mr. Campbell. Well, thank you very much, Chairman Roskam, Ranking Member Lewis, and the other members of the committee. I appreciate the opportunity to be here today to testify on this very important hearing on the Department of Labor's fiduciary investment advice rule.

Before I begin, though, I do need to advise you that the views I express today are my own. They are not those of Drinker Biddle & Reath or necessarily my colleagues or my firm or any of our clients. They are my personal views, informed by my experience working at ERISA.

I am currently, as obviously indicated, an ERISA attorney in private practice, but from 2006 to 2009 I served as the United States Assistant Secretary of Labor for Employee Benefits, the head of the Employee Benefits Security Administration, the agency that is promulgating this regulation.

I would like to use my time today to discuss certain misconceptions about the Department's proposal and to explain why I believe the proposal's technical and policy flaws would, in fact, harm the very persons it is intended to protect.

I am very concerned that the proposal's increased costs and legal liability risks for advisors would reduce choices, increase costs, and reduce the availability of advice for small plans and small accounts.

The first misconception I would like to address is the notion that this proposal simply requires advisors to act in the best interests of participants and IRA owners. In truth, the proposal does not create a new, quote, "best-interest standard." Instead, it seeks to apply the ERISA fiduciary regime and prohibited transaction rules to IRAs.

These rules and the effect of these rules don't actually consider the content of the advice provided. And, in fact, they can prevent an advisor from acting in your best interest, because the prohibitions are based on the structure and the relationships of the parties, not of the content of the advice.

The Department has previously recognized this issue. In 2011, the Department estimated that, due in part to the very same rules this proposal would expand, participants and IRA owners are denied access to investment advice, costing them more than $100 billion a year in preventable investment mistakes.

And these rules would also prevent essential activities, just, again, based on the structural cost differences between products, that have nothing to do with conflicts of interest. For example, a plan advisor would be prohibited from helping a plan participant who approached her to do a rollover simply because the pricing in the individual IRA is likely to be higher than the pricing in the institutional 401(k). That has nothing to do with a conflict of interest and everything to do with the differences in financial products.

Didn't the Department fix this in the proposal with the "best-interest contract exemption" to permit some of these activities to occur? Well, that is the next misconception that I would like to address, because the BIC exemption, as proposed, doesn't actually address these problems effectively. And, in fact, the BIC exemption contains a number of provisions that, in my opinion, are beyond the Department's authority to regulate.

The BIC exemption has four provisions, in particular, that I think exceed the Department's regulatory authority.

First, ERISA provides exclusive remedies for participants, and the Department has no authority to create new remedies, yet the BIC exemption would create a new State law cause of action for breach of contract. I don't believe the Department can require in an exemption a condition that it lacks the authority to directly promulgate.

Secondly, the Department is trying to establish a fiduciary conduct standard for IRA advisors through a condition in the BIC exemption. The Department has no authority to do this. In fact, when Congress simultaneously created ERISA and IRAs in 1974, it explicitly did not apply the ERISA fiduciary standard to IRAs.

Third, the IRS, not the Department of Labor, has enforcement authority over the prohibited transaction rules for IRAs. The Department cannot outsource to State courts enforcement authority that it doesn't possess.

And, fourth, the Department cannot prohibit binding arbitration clauses in the BIC exemption under the Federal Arbitration Act.

Now, the unusually extensive public comments and the, in my opinion, unprecedented, or at least in my experience unprecedented, 4 days of administrative hearings that the Department of Labor held highlighted that the proposal has significant technical flaws regardless of one's view on the

underlying policy. These flaws are the product of an agency working behind closed doors to attempt to regulate an IRA marketplace it doesn't really understand. And I agree with the chairman that, in fact, the Department needs to repropose this rule and benefit from an additional round of public comments.

Finally, I would like to address a related issue, which is that the Department has fast-tracked a regulation that did not appear on any of its previous unified regulatory agendas that is intended to facilitate State efforts to create State-based retirement plans for private-sector employees and potentially employers. We don't know what is actually in this regulation, but it was sent to the White House, the Office of Management and Budget, for review on September 1.

I believe Congress should be concerned about this and look at some oversight here, in that Federal preemption of these State rules has provided the benefits and the protections that workers rely on, and I think we should wonder what provisions States might change as they go through and do these activities.

My time has expired. I appreciate your indulgence and look forward to answering any questions.

Chairman Roskam. Thank you, Mr. Campbell.

Mr. Stevens?

STATEMENT OF PAUL SCHOTT STEVENS, PRESIDENT AND CEO, INVESTMENT COMPANY INSTITUTE

Mr. Stevens. Thank you, Chairman Roskam, Ranking Member Lewis. I am grateful for the opportunity to discuss DOL's proposed new definition of fiduciary duty for retirement advice and services and also America's retirement system more broadly.

ICI and its members strongly support the principle that underlies the Department's proposal. All financial advisors should be held to act in the best interests of their clients.

The proposal itself, however, is deeply flawed. Were the rule adopted in anything like its current form, it would harm retirement savers by drastically limiting their abilities to obtain the guidance, products, and services that they need to meet their retirement goals. It also would increase costs, particularly for those retirement savers who can least afford them.

You have my detailed testimony. In this statement, I would like to make just four points.

First, supporters of the DOL proposal claim that retirement savers are suffering $17 billion a year in harm due to broker-provided advice. This claim is false. It is just an exercise in storytelling. Why? First, the claim relies on academic studies using outdated statistics that simply don't reflect today's marketplace. The Department then misapplies those studies to vastly overstate their findings.

The Department also assumes that broker-sold funds are, quote, "underperforming." In fact, a simple review of publicly available data shows that investors who own front-end load funds have concentrated assets in funds that outperform, not underperform, similar funds by about one-quarter of 1 percent annually.

Second, the Department ignores the significant societal harm that its proposed rule would cause. Its economic analysis takes no account of the costs the rule would impose on investors by forcing them to move from commission-based advice to fee-based accounts.

The Department also ignores the harm that investors with small accounts will suffer when they lose access to advice. Fee-based advisors typically require minimum balances of $100,000 or more, but 65 percent of households with individual retirement accounts hold less than $100,000 in those accounts, and that is 22 million American households.

Taking these two factors together, we submit that, far from helping savers, the rule would increase fees and reduce returns, resulting in $109 billion in net increased costs to American workers over 10 years.

My third point: In proposing such sweeping changes, the Department risks undermining a voluntary, employment-based retirement system that is helping millions of Americans achieve a secure retirement. ICI and its members support policies that would improve access to retirement savings opportunities and make plans more efficient and more effective, but those improvements must build upon the strengths of the current system.

What are those strengths? In today's system, Social Security provides a sound base for all workers and a near-complete pension for those with lower lifetime earnings. In addition, four out of five -- that is 80 percent -- of near-retiree households have accrued retirement benefits from employer plans or IRAs, and assets earmarked for retirement today are seven times greater than they were in 1975, before the DC system was invented, even after adjusting for inflation and growth in the number of households.

Finally, my fourth point. Recent initiatives to create State-administered retirement plans for private employers raise substantial and, in my mind, troubling questions:

Would these plans fragment retirement planning for mobile workers moving from State to State, for employers who employ individuals in different States, and for providers who are trying to serve a national market?

Would State-run plans erode the current private-sector system, for example, by allowing participating employers to avoid obligations and worker protections of ERISA?

How would State-administered plans be governed, and how would they protect participating investors?

And if these plans are developed without a clear understanding of the coverage gap -- and my testimony goes into that question in considerable detail -- would they impose needless costs on employers without actually increasing participation by workers?

Mr. Chairman, members of the subcommittee, the questions you are addressing today are vitally important to America's retirement savers. I appreciate the chance to participate in the hearing. I look forward to your questions. Thank you.

Chairman Roskam. Thank you, Mr. Stevens.

Ms. VanArsdale?

STATEMENT OF JUDY VANARSDALE, LPL FINANCIAL ADVISOR, ENRICH PRIVATE WEALTH MANAGEMENT

Ms. VanArsdale. Chairman Roskam, Ranking Member Lewis, and members of the committee, I am Judy VanArsdale, co-owner of enRich Private Wealth Management and a financial advisor affiliated with LPL Financial. My business is based in the Chicago area, and I am excited to discuss the work I do every day to help my clients save for their futures and highlight the way in which the DOL-proposed fiduciary rule could impact my work and the ability of millions of Americans to save for their retirement.

From young teachers to folks in retirement, the one thing my clients have in common is that they want to be proactive and engaged in the creation of their financial plan and goals. I am proud that my small business is able to make a difference in the lives of so many individual investors.

I believe firmly in the best-interest standard. In my mind, that has never been the debate. My concern is that the DOL's proposed rule could create unintended consequences that would make it harder for me to provide services that I currently offer and harder for my clients to access my advice.

Here is why. In order for me to serve my retirement clients using the brokerage model, I would have to satisfy the requirements of the DOL's proposed best-interest contract exemption. Based on my understanding of the BIC, satisfying its requirements would be challenging and would create problematic new liabilities.

The sad reality is that if I am unable to use the BIC exemption my clients with small accounts could be hurt. Those clients would not have access to advisory services because their accounts are small. If they lose access to brokerage services, they may lose the ability to get personal assistance with their retirement accounts.

It might be helpful if I describe how I interact with clients today. During my first meeting with a potential client, I learn about the client's complete financial picture. I will ask about her goals and aspirations, purchasing a home, children's education, retirement. I encourage clients to ask me how and why I should be paid; what happens if the market plunges; how will they protect themselves from the rising cost of health care; and other questions.

If the relationship is a fit, I will recommend an investment strategy that will help my client pursue her goal and try to stay in close contact with her because it is important to know what is going on in her life. If the DOL implements its rule proposal in anything close to its current form, I might not be able to serve clients with small accounts with respect to their retirement needs.

I believe in clear, simple disclosure. The BIC exemption requires many costly, complicated disclosures and requirements. The lack of clarity in the rule proposal and the new exposure to class action under State law creates an increased risk of litigation.

I am a small-business owner. I employ five women in my office. I have great concern over subjecting my business to increased business and litigation risk. Without a workable solution, small businesses like mine may not feel comfortable using the BIC exemption and would be restricted from serving my smaller retirement brokerage accounts.

The DOL offers robo-advisor services as an option for small investors. If the proposed rule is implemented, what would happen to the man in his 50s who recently contacted me about anticipated changes to the Illinois pension system? He thought his pension would be enough for retirement but realizes it is not. I was able to get him started on a savings plan. Would a robo-advisor understand the complexities of this man's situation?

Indeed, during the market volatility event in August, I spoke with many clients concerned about their accounts. Could a robo-advisor help clients who want to cash out when the market drops? Could a robo-advisor help a young investor set up an IRA, figure out how to save additional funds so that she can move out of her parents' home? Could a robo-advisor help the woman who at 53 finds herself a widow?

An algorithm does not take into account the need for human interaction and understanding, and sometimes my investors just need to know I can help them in a time of personal crisis.

As I have said before, I believe in the best-interest standard. I also believe that the challenges with respect to the proposed DOL rule may effectively be resolved either through significant revision or legislatively, in a bipartisan manner, requiring clear and understandable disclosures.

This is my life's work, and I have a great passion for what I do. As many have said before me, we are now in a moment of great opportunity. Let's work together to craft a fiduciary rule that is workable and protects the best interest of all investors.

Thank you so much for your time.

Chairman Roskam. Thank you very much.

Mr. Specht?

STATEMENT OF KENNETH SPECHT, FINANCIAL SERVICES PROFESSIONAL, AGENT, NEW YORK LIFE INSURANCE COMPANY

Mr. Specht. Good morning, Chairman Roskam, Ranking Member Lewis, and members of the subcommittee. Thank you for inviting me to testify. My name is Ken Specht. For the past 27 years, I have served as a financial advisor with New York Life in Kenosha, Wisconsin. The views I share this morning are my own.

I support the Department of Labor's goal of a best-interest standard. That is how I work. But the proposed rule, as written, could hurt middle-class consumers by cutting off access to affordable advice and a secure retirement.

As a financial advisor, my goal is to build relationships, working with clients to help them achieve financial security. I serve my clients' best interests. Nearly all of my clients come from referrals and repeat business. Even my wife was a referral; Judy's parents were clients of mine before I ever met her.

When I meet with my clients, sometimes in their homes or in their offices, we talk about their family, their personal circumstances, everyone's health, current and future needs, future plans. There are no cookie-cutter deals, just tailored solutions to fit their personal situation. And we review their needs on a regular basis.

Based on information received from my company and industry trade associations, I have three major concerns with the proposal and the impact it will have on my clients. First, the rule seems to equate "best interest" with "lowest cost," even when the cheapest products may not be in the client's best interest. Second, it appears to prohibit offering proprietary products, meaning I can't even offer them when they are in the best interest of the client. Third, it seems to have a bias against commissions, which are usually the most affordable way to pay for financial advice.

Allow me to share a client's story. Bob and Jean were both 55 years old when he lost his job in 2004. He was a software engineer for a small firm. His wife was a leader in a Kenosha -- administrative leader in a Kenosha title company. At that time, they did not know what options they had or how to meet their needs in retirement. They called me. We spent time reviewing their situation and what the future might hold.

They needed about $300 a month of additional income to cover their expenses. We set up an income annuity that will pay them $330 per month, every month, as long as either one of them is alive. Today, those payments are still direct-deposited into their bank, same day, every month, and they will continue no matter how long they live, guaranteed.

Under the proposed rule, fewer savers and retirees will have access to such guarantees for the three reasons I mentioned earlier.

First, the proposal implies the cheapest product is always the best product. This could lead advisors to offer the cheapest products rather than the safest. If Bob and Jean had gone with the cheapest company 11 years ago, it is possible that company might not be around today. The cheapest products often come with the weakest guarantees.

Second, the proposal seems to have a bias against proprietary products. For the past 27 years, I have become an expert in New York Life products and solutions. I primarily offer New York Life because they have the strongest, highest financial strength ratings among life insurers. Bob and Jean said they did not want to lose any of their money, but, under the proposal, I could be put in the bind of not being able to recommend a product that is in the best interest of the client, like in this case.

Third, regarding the bias against commissions, I will earn about one-fifth of 1 percent a year of their investment in return for the guidance I provide. You see, Bob and Jean have owned this annuity for 11 years already. Their joint live expectancy is another 25 years. So when a modest up-front commission is spread over the years the saver holds our products, the actual cost is often far lower than other ways of paying for financial guidance.

Clearly, many of the products I provide can be bought online, but people in Kenosha still choose to work with me. With something as important and scary as retirement, people want to work with someone they trust and a company they trust.

In closing, I support the Department's goal of a best-interest standard, but the proposal's unclear standards, biases, and legal risk mean fewer middle-class Americans would have access to my guidance and my company's guarantees.

I thank the subcommittee and would be happy to answer any questions.

Chairman Roskam. Thank you, Mr. Specht.

Ms. Owen?

STATEMENT OF PATRICIA OWEN, PRESIDENT, FACES DAYSPA

Ms. Owen. Thank you, Chairman Roskam, Ranking Member Lewis, and members of the subcommittee, for the opportunity to testify today. I am Patricia Owen, president and owner of FACES DaySpa on Hilton Head Island, South Carolina. I am here representing the U.S. Chamber of Commerce, of which I am a member of its Small Business Council.

FACES DaySpa opened in 1983 as a retail cosmetic store but has since evolved into a day spa where our business is primarily service-oriented. As such, human capital is the most vital resource to my company. I currently employee employ 25 people, of which two-thirds work full-time. To compete for good talent, I offer affordable employee benefits, including paid training, employee discounts, supplemental health insurance plans, and a retirement savings plan.

As the owner of a small business, I focus on the core operations of my business and use outside professionals to help me with other functions for which I don't have the time or expertise. For example, I use a CPA firm to assist with tax issues, an attorney to assist with legal matters, and a financial advisor to help me with my retirement savings plan.

Most of my employees are considered millennials. In other words, they are young and in the early stages of their career. Therefore, saving for retirement is not a priority and not on the forefront of their minds.

I consider myself a second mother to my employees and want to ensure they are thinking about their future. So, several years ago, I implemented a 401(k) plan where I provided a 50-percent employer match. My financial advisor helped me set up the plan, educated me on a range of investment options appropriate for my employees, and provided general investment education to my employees.

Today, if any employee has questions about their 401(k) account, they can call an 800 number and get quality, personalized education on investing their savings. Also, I encourage all employees, even those who aren't eligible or don't participate in the plan, to participate in investment seminars my financial advisor conducts for my company to help educate them on saving for retirement.

Unfortunately, the financial crisis hit in late 2008, and, like many small businesses, we were significantly impacted, so I was no longer able to provide the employer match. I made this difficult decision to avoid laying anyone off.

I have recently considered reimplementing the employer match; however, the potential of higher costs for small businesses emanating from the impending fiduciary rule at the DOL has caused me to hold off on this for now. If the rule moves forward as proposed, it is unlikely that I will be able to absorb both the higher costs resulting from the DOL rule and provide a 50-percent match to my employees. It is possible that I may even need to drop the plan altogether.

The current participation rate for those eligible for our 401(k) plan is less than 50 percent. This percentage is noticeably lower than the 75-percent participation rate when I did offer a matching contribution.

The Chamber has submitted several comment letters to the DOL enumerating many ways in which the proposed rule is unworkable. In my testimony, I would like to highlight three issues that will have a particularly negative impact on small-business plans.

First, the sellers carveout discriminates against small businesses and will decrease access to much-needed guidance.

Under the proposal, there is a carveout for advisors that are selling or marketing materials. However, this carveout does not apply to advisors to small businesses. The DOL seems to believe that small-business owners like me are not as savvy as large businesses and therefore need additional protections.

When I talk to my financial advisor, I am aware that he is providing a service for a fee and selling a product. If I were not able to discern when I am involved in a sales discussion, I would not be able to run a successful business.

Second, the changes to the education carveout will restrict access to investment education for both small-business owners and their employees. My employees value the investment education provided to them, specifically providing investment recommendations on various asset classes. This information allows them to make informed investment decisions. Many of my employees cannot afford to pay for investment education separately and might be discouraged from investing in the plan at all if the company did not provide this benefit.

Third, the best-interest contract exemption will increase the cost of services to small businesses and possibly eliminate access. There is some question about whether advisors to small-business plans are even able to use the BIC exemption, but, even assuming they are, there will certainly be additional costs associated with these changes. As a business owner who relies on outside professionals to manage my plan, any additional costs imposed by the regulation will be passed on to me.

In conclusion, I am very concerned that the DOL proposal will not achieve its goal of better protecting workers and retirees but will instead make it harder for small-business employers and employees to access financial advice and to increase their retirement savings.

Thank you for the opportunity to testify today. I look forward to any questions you might have.

Chairman Roskam. Thank you, Ms. Owen.

Mr. Silvers, bring us home.

STATEMENT OF DAMON SILVERS, DIRECTOR OF POLICY AND SPECIAL COUNSEL, AFL-CIO

Mr. Silvers. Thank you, Mr. Chairman, and good morning.

Good morning, Mr. Chairman and Ranking Member Lewis, members of the subcommittee. My name is Damon Silvers. I am the policy director and special counsel for the AFL-CIO, which is a federation of 56 national and international labor unions, representing 12.2 million working people in America.

The rulemaking we are discussing today affects everyone in America who saves for retirement or hopes to save for retirement. In the last 30 years, we have largely changed our system for providing retirement income from one where employers contribute, professionals manage retirement assets, and employers bear the risk of investment losses to one where, as we just heard, employers do not contribute, individual employees manage their own assets and bear the risk of losses.

One of the many things wrong with this system is that almost none of us, including myself, have the expertise to manage our own money or to effectively oversee money managers, and too many in the financial sector who seek to give working Americans advice have a profound financial conflict of interest affecting that advice.

Nowhere is this more true than in the area of the transition from 401(k) plans and other employer-associated plans to IRAs in the lump-sum process. For union and nonunion workers alike, IRAs are the largest and fastest-growing form of retirement savings, with rollovers from employer-sponsored plans expecting to approach $2.5 trillion over the next 5 years. This explains why, contrary to the testimony of the previous witnesses, protections for the movement of money from ERISA funds into IRA rollovers is essential to protecting the retirement security of working Americans.

Now, often what we hear here in Washington is the idea that financial markets are level playing fields where information is free and universal and the best of all possible outcomes will prevail in this best of all possible worlds. This is nonsense. Capital markets are all about information advantages.

There are two kinds of actors in capital markets: those who follow information in the market in realtime, have powerful analytic tools to understand the information as they receive it, and the ability to exploit it -- big banks, mutual funds, hedge funds, proprietary trading funds, the people who stand behind all of the witnesses here representing the financial sector are those kinds of people. And then there are rest of us, you and I and tens of millions of other working Americans who are trying to save for our retirement, who have none of those resources, none of that information, none of that power.

Given the complexity of the products on the financial market today, there is no way an ordinary consumer can fully unpackage the cost of what he or she is being sold or the incentives of the, quote, "advisor" who is urging he or she to buy these products.

There are two fundamental decisions all investors in retirement savings plans have to make: asset allocation -- debt, equity, large cap, small cap, international, domestic; and then within asset classes you have to choose specific products.

The asset classes themselves vary in terms of how much fees and how much margin they yield to the investment managers. Actively managed fixed-income funds, for example, generally have lower fees than actively managed equity funds and lower margins. And, within specific asset categories, there are huge differences in how you get basic risk-return tradeoffs. For example, you can invest in actively managed large cap equity for as much as 100 basis points a year in fees, or you can do it through an index fund for less than 10.

Money management firms, with a wide range of products in their offerings, have obvious conflicts of interest, both because their asset allocations that are good for their clients are not necessarily good for those firms and because within each asset class there were lower- and higher-fee products. A sophisticated individual may be able to figure out some of this by looking at prices. There is no way even the most sophisticated individual can understand what the margins are in the products.

And making a mistake here can cripple a retiree's future. The Council of Economic Advisers, which, in my experience, has not been terribly hostile to the financial services sector over time, has concluded that the costs of these conflicts are $18 billion a year -- a year -- for retirement

savers. The impact on an individual is the difference -- for a $10,000 investment over a lifetime, ending up with $27,000 rather than $38,000 at the end of the day.

Let me be clear that the issue here is not whether advice is a good thing. Advice is definitely a good thing, but only if it is good advice in the interest of the plan participant.

And, ultimately -- and I will close here -- we are dealing with money that is taxpayer-subsidized. The tax exemption for retirement security is one of the largest tax expenditures in our system, and we have been told that $17 billion of it a year is simply being handed over to Wall Street. That, in my view, is nothing but crony capitalism. It is inexcusable, it needs to be stopped, and that is what this rule will do.

Thank you.

Chairman Roskam. Thank you, Mr. Silvers.

I want to thank the panel.

Mr. Meehan?

Mr. Meehan. Thank you, Mr. Chairman.

Mr. Silvers, are you a cynical guy by nature?

Mr. Silvers. I have never been asked that question in a hearing. Of course not. I am highly idealistic. That is why I do the work I do for the salary I get paid.

Mr. Meehan. So do you think that every investment advisor starts with the premise of "how can I rip off this client" versus those who often have relationships with people, as was indicated, some even family-based relationships, in which the objective is, you know, I do this for a living, I get enjoyment out of helping people, where the advice is given on the basis of what can I do best to help people.

Why do you believe that that isn't the motivating factor?

Mr. Silvers. Congressman, in my experience and, I suspect, in yours, we do not make the laws of this Nation with the best of us in mind, nor with the worst of us. We make the laws of this Nation with people in mind who live in the real world of economics and incentives and having to bring home paychecks for their own families.

Mr. Meehan. Well, let me talk to you about that, because you couldn't have reached a better point right now. Because when I go out and I talk to the people in my communities, the one group that feels the greatest sense of frustration right now -- and you, as a person associated with organized labor, should appreciate this -- are people who are thinking they are living in a world of wage stagnation. They are working harder than they have ever worked before, and they don't think they are getting ahead.

So that is the daily wage that they get, but some people actually take that wage and they invest in their future, looking down the road when we will have a more difficult period and maybe towards their pension.

Now, you have heard testimony and I have heard it again and again and again from the people who say, "I would and am capable today of going to that person below $100,000, the average American, and I would give them investment advice, but if you put all of these restrictions on my ability to do it -- not the least of which, I can be sued -- I won't take that client. I don't need to. There are plenty of big fish out there for me to make my living on the $100,000."

Why is this not something that is going to be a disincentive for those struggling Americans to actually have the advice of somebody who has their best interests in mind to make that little improvement in their own financial statement?

Mr. Silvers. Congressman, if it is really true that investment advice will be withdrawn if it is not allowed to be conflicted, then that advice is kind of by definition -- isn't it? -- advice that is not in the person's interest and it is not free. It is simply hidden and a rip-off.

And if you are going to talk about wage stagnation, what we are witnessing here is an illustration of why we have wage stagnation in the United States. And it is because the winners systematically rig the rules, corrupt the system, and make it impossible to ensure that the public processes work for the benefit of average working Americans and not for Wall Street.

Mr. Meehan. Well, my experience in the real world, Mr. Silvers, is that the people who are out there working in this industry don't wake up every morning looking to rip people off.

Mr. Campbell, I, as a former prosecutor, am concerned about two things. One is the creeping incursion right now of the Department of Labor into areas in which they are making rules but they don't have the capacity to actually police those rules, both under the code and resource-wise. So what we are doing is creating a circumstance in which we have rulemaking but no real ability for oversight.

In fact, what I see is the potential that what we are doing now is we are now outsourcing this oversight to private attorneys. I am an attorney, and I think there are a lot of good things done by attorneys. There are also some bad things, and if you want to see cynicism, start with some of the people in that profession. Just start suing.

So let me ask you a question about that. Is there overreach here and is it appropriate for the Department of Labor to be turning to the enforcement of this to any measure of private attorneys that can just find a way to bring a lawsuit?

Mr. Campbell. Well, I think you raise an excellent point, sir. First of all, I disagree that the Department actually has the authority, specifically with respect to ERISA plan participants, to create this alternative remedy to ERISA's exclusive remedies by virtue of allowing these State law class actions for breach of contract.

But, secondly, I echo your concern. I think it is a very troubling aspect of the Department's proposal, and I think you said it very well, that they are outsourcing enforcement to the plaintiff's bar.

As you say, there are certainly times when folks need attorneys and there are times when lawsuits are appropriate, but the way the BIC exemption is structured, the good-faith compliance efforts of advisors and financial institutions based on what are inherently subjective decisions -- the conditions they have to comply with have inherently subjective decisions -- now subject them to class action in State court, where an enterprising attorney could say, well, you said the appropriate standard was X, it is actually X minus five, therefore we are going to litigate and see where that gets us.

Mr. Meehan. Thank you, Mr. Chairman. Thank you for your indulgence, and I yield back.

Chairman Roskam. Mr. Lewis?

Mr. Lewis. Again, Mr. Chairman, I want to thank you for holding this hearing today.

And I want to thank each of you for taking the time to be here.

My first question is for the entire panel. Do you believe that advisors for retirement savers should be required to take the best interests of their clients into account in providing investment advice?

And I want you to provide me with a simple yes or no answer. Just yes or no.

Mr. Campbell. Yes, sir.

Mr. Stevens. Absolutely.

Ms. VanArsdale. Yes.

Mr. Specht. Yes.

Ms. Owen. Yes.

Mr. Silvers. Yes.

Mr. Lewis. Very good. Thank you very much. That is the first time I have seen something like this in a long time.

Mr. Silvers, some people argue that the proposed rule will result in less advice being provided to small savers -- for example, those with account balances of $25,000 or less. What is your response to that?

Mr. Silvers?

Mr. Silvers. You are asking me, right, Congressman?

Mr. Lewis. Yes.

But if you want to respond -- go ahead, Mr. Silvers.

Mr. Silvers. All right.

As I was saying to your colleague a moment or two ago, if it is true that investment advisors are providing advice to small account holders only because they are able to do it in a conflicted fashion, that tells you that the reason that they are doing it is because they are able to squeeze the fees out of steering people into higher-priced products.

That is a terrible thing for our country to let that happen. And if, by bringing the real cost of that advice to light, we are able to lower it to a more reasonable level or to simply make the conflict go away by requiring -- and this, I think, is the whole point of the best-interest contract letter -- by ensuring that conflicts are disclosed and mitigated, that is clearly a better outcome than bleeding small investors' accounts out behind their backs, which is essentially the implications of the argument that the financial services sector is making.

Mr. Lewis. Mr. Silvers, just a followup. Could you explain, what is the key benefit over time that retirement savers should expect from this proposed rule?

Mr. Silvers. The key benefit over time should be to lessen dramatically the extent to which investors are getting advice designed to steer them into unnecessarily high-fee products and to get their asset allocation to reflect the investor's interest rather than the interest of the people giving them the advice and getting compensation from the big firm they work for on the side.

The consequence of those things, as I discussed in my testimony, is likely to be a dramatic increase in the amount of money that working Americans have when they actually have to meet their expenses in retirement.

Mr. Lewis. All right.

Now, Mr. Silvers, some have criticized the education exception. They argue that it does not allow retirement advisors to mention the actual investment options available under the retirement plans.

Mr. Silvers. Congressman, this is an issue of really whether or not the plan involved has a limited menu. If you have a limited menu of options and, as part of education -- which is not supposed to be steering anyone to a specific product -- if, as part of education, the advisor shows the investor the full range of options available in each asset category, that is clearly education. You are not steering them; you are just showing them all the options that they have.

But if you are talking about an IRA or a rollover, the options are limitless. And so, if you are picking one option -- if the advisor is picking one option, say, the one that they get paid to steer

you to, and pointing that one out to you, that is not education. That is not even advice. That is sales masquerading as advice, masquerading as education. And that should not be allowed under that exemption.

Mr. Lewis. Thank you very much.

Would others like to respond?

Mr. Stevens. Congressman, I would just say that there are interactions in this marketplace that range across a huge spectrum.

In my testimony, I talk about my son rolling over, in a conversation with a mutual fund firm, an hour long, in which he had all sorts of options that were described to him. He was moving from one job to a second job and to another city. The interactions there were not fiduciary in nature. There was no pretense of providing advice, but there was tremendous amounts of information and help and education that he was getting to get to the right place.

Those kinds of interactions in call centers, on the Web, and in investor centers across the country are also going to be disrupted as a result of this rule. Because the BIC exemption simply doesn't work.

Mr. Lewis. Thank you, Mr. Chairman. I yield back.

Chairman Roskam. Mrs. Noem?

Mrs. Noem. Thank you, Mr. Chairman.

As a Member of Congress who has been a small-business owner, my number-one concern is how this impacts small businesses across the country, because 99 percent of employers in the United States are small businesses. This regulation makes it much harder for those employers to help their employees save for retirement because it has increased compliance costs. It also will create restrictions to what they have available to them.

So what is even more troubling to me, which Mr. Silvers alludes to, is the deception and coercion of trying to convince people to throw their money down the tube; and further, this regulation exempts the larger employers and larger employer plans, which is where I would think that deception and coercion would have more of a tendency to happen, rather than the small businesses that would really be restricted.

This regulation doesn't even address those large employer plans. It seems as though the administration thinks that large corporations can make good financial decisions but that small employers and employees can't.

Ms. Owen, you are an employer. I know that today it appears that the government can make better decisions about your employees' retirements than they can, but I want you to talk

specifically about how this hurts your business and how it hurts your employees.

Ms. Owen. Well, it definitely hurts my employees because having access to the advice of our financial person even encourages them to start saving for retirement. They are 25 years old. They don't foresee that at some point in their life they are going to want to retire. They are living for the moment, more or less. And just having him come in, which he does on a regular basis when our new people that have been hired are eligible, just to educate them on the benefits of saving for retirement is the first step.

But besides that, it hurts me as a small business owner because I am competing against, major corporations, major hotels, major resort spas for employees, and they, of course, do have deep enough pockets to have retirement plans. So I need to be able to offer something to compete with them so that I can hire the same quality people and stay in business and be successful.

Mrs. Noem. What is interesting to me is that, as a small employer, you have skin in the game.

Ms. Owen. Absolutely.

Mrs. Noem. It is your money.

Ms. Owen. Absolutely.

Mrs. Noem. You care that it is successful and actually benefits your employees because you want them to stay, and it is your money that you have got involved as well.

Ms. Owen. Right.

Mrs. Noem. When the government makes decisions and rules and regulations, they are using other people's money. It is bureaucrats deciding they know better than you do. It is not even their money that they are playing around with, they are just saying that you don't know how to manage your money correctly and help your employees be successful, which bothers me.

Mr. Campbell, you have written about how this rule will eliminate some of the plans that are the most popular with small businesses. Could you speak to that a little bit? Specifically, do you think this regulation specifically helps and favors larger businesses?

Mr. Campbell. Well, I think you are very correct to point out the problem with the large plan carveout that the Department provided. It said that plans with more than 100 participants or more than $100 million in assets could continue to receive advice of their choosing, from whichever types of providers they felt were appropriate, but it denies that same ability to small businesses and to individuals, therefore treating every IRA owner alike, no matter how different their circumstance might be. And, in essence, the Department said that this size was a proxy for financial sophistication, which I think makes no sense on the face of it.

But in terms of the effect on small business, yes, I recently wrote a report where we discussed how this proposal would create concerns, as you just described, for small businesses making decisions and increase costs and what effect that would have on the availability of advice, particularly looking also at some of the IRA-based, employer-provided plans, like SEPs and simple IRAs, and how this would affect those. There is actually some ambiguity, I think, as to what the rule would actually do for some of those plans, and that is something that comments have sought clarification on from the Department.

But I think it is very clear that advisers will have to take a number of steps that will be expensive, that will be costly, that will change their legal liability risk, that will change the kind of insurance they have to purchase. All of those costs ultimately get passed on to the end consumer, which is the plan participants and the small business owners.

Mrs. Noem. Thank you.

Mr. Chairman, my biggest concern about this regulation is that it specifically is targeted at small businesses. It is going to drive up costs and keep employees from being able to invest in their future while creating a carveout for large employers and giving them special treatment, and that is exactly the opposite thing that should be happening today.

I yield back.

Chairman Roskam. Mr. Doggett.

Mr. Doggett. Thank you, Mr. Chairman.

This is an important hearing about retirement security, and it is also a story about how Washington does or does not respond to the challenges that working people across this country face.

While I am very pleased to hear Chairman Roskam affirm the importance of the contingency fee system so that working people can have their day in court when they are abused, and I am pleased to have an industry representative here, summoned by our Republican colleagues, who affirms the importance of the Social Security system as an important pillar of retirement security, which we don't often hear in this room, there are concerns that I have about the overall issue of an estimated $17 billion to $18 billion each year that Americans lose because of conflicts of interest.

I appreciate the testimony of each of the witnesses here. I rather expect that you are the leaders in your profession and that you have helped the security of hundreds, if not thousands of American families, and I applaud you for your efforts to do that. I don't think you wake up every day trying to rip some people off, but I think, as in any profession, there are some people in this business who do that, and there are many more not intending to rip people off but simply motivated by the system of incentives that is in play here that encourages and incentivizes conflicts of interest.

Now, whether the administration has come up with the best answer and the appropriate answer, I am not sure. What I do know is that today, in evaluating this answer, we have five people here on behalf of the providers of this service and we have one person here on the side of the retirees and the consumers of those services, and that is about the standard ratio in this place.

And, also, I haven't found that the administration was really in a race to solve this problem, which is another difficulty we have here in Washington, because if you look at what occurred here, it was way back in 2010 that this rule was proposed. Every witness we have today had a chance to comment on it. Over 300 people did. And after those comments, instead of acting, the administration withdrew the proposal. It may well have been, having looked at it some, may well have been well justified in removing it because it was not the right way to proceed.

And then we went from 2011, 2012, 2013, 2014, finally to this year, and the administration proposed another answer, with many people having said they don't want anything to be done in this area. They want to leave the situation just like it is. And maybe it is not $17 billion or $18 billion that is lost every year. Maybe it is only half that. Maybe it is only $4 billion or $5 billion a year. But it is a big enough loss to families across this country that there ought to be some meaningful response to it.

And so this year we had almost 3,000 comments, including, I expect, from some of the individuals that are here. They have had an opportunity to be heard there. And now we are at a point in the regulatory process when the Department of Labor cannot come here this morning and defend its own rule because the comment period has ended, we can't hear those arguments, but what we can know at this point in the regulatory process is that the objections that are being raised here today, that were raised over the last several years, can be considered in the development of the final rule.

So I am for a final reasonable rule that takes into consideration objections that have been raised, but sees as its principal responsibility, as ought to be the principal responsibility of this Congress, to protect retirees against conflicts of interests and ensure that they get top-quality services. There are companies that focus their attention on poor, more economically disadvantaged customers, and they seem to be able to comply with a reasonable standard to avoid conflicts of interest.

Mr. Silvers, are you familiar with some of those companies that already are out there, seeing their focus on working families?

Mr. Silvers. In the last 10, 15 years, as there has been increasing awareness of the risks posed by conflicts of interests in investment advice, there are a wide range of firms that offer conflict-free advice in a variety of manners.

But I think what is really important here is, is that, if you actually look at the rule, my fellow witnesses who are in this business, I very much suspect, if this rule goes through more or less as you are urging, that my fellow witnesses who are actually in the business of providing advice will be doing so happily to all of their clients afterwards.

Mr. Doggett. Thank you very much.

And the problems, as you see it out there, are pervasive and deserve a reasonable response through the regulatory process, not prejudiced by congressional interference.

Thank you. And I yield back.

Chairman Roskam. Mr. Kelly.

Mr. Kelly. Thank you, Mr. Chairman.

Thank you all for being here, both the people who actually are in this business, and, Mr. Silvers, thanks so much.

One of the recurring themes is always: I am from the government and I am here to help you. I am kind of interested because we are talking about fiduciary responsibility, and I looked at this, and I said: Okay, fine, , best interests, I understand that. However, nobody ever questions Social Security to find out if they are operating in the best interests of the people they represent and the funds that they sit on.

I was looking at the numbers, and there is, if I am right on this, and correct me if I am wrong, $7 trillion in IRAs right now, $7 trillion.

Ms. Owen, my dad started our business in 1953, little one car showroom with about 12 employees. In 1970, when I graduated from college, he called me and said: "Listen, I want to start a pension program." And I said: "I have no idea what you are talking about."

He said: "No, you don't. But I want to make sure that the people we work with every day for our mutual benefit, that they have something to look forward to, because I really don't think that Social Security and winning the lotto is a great retirement plan. So I am going to offer that to them." And we have had participation since 1970 because he was looking ahead.

Now, he didn't go to the government to ask what he thought they should do. He went to people that actually did that kind of work. We are in the automobile business, it is very complicated, so we consider ourselves as transportation consultants. We try to help people.

But, Mr. Silvers, you said this is very complicated, but what we really want to do is go after the people who actually sell these products and explain these products because it is not right that they get paid for doing that. I would never go to a doctor that says: "There is no fee for my service. I am just doing it out of the goodness of my heart."

We are talking about people's financial stability. Now, I have watched this happen for so long now, and I will tell you this. There is an old saying: If you can't convince them, confuse them. Try and make it seem like there is some boogeyman out there, somebody is out there every day trying to undermine the great people of this country and trying to take advantage of

them, use the Gruber effect any time you can. Always make it look like they are so unintelligent, they are so stupid they can't possibly plan for their own future.

If you believe that, then I think you have missed the mark, because the ladies and the gentlemen I represent in Pennsylvania's Third District are all blue collar people who very work very hard, and they work very hard for one reason and one reason only, their kids and their grandkids, and it is a way of saying thank you to the people before them that made it possible for them.

This is very upsetting to me, that all of a sudden the government has to step in like they do with health care and say: You know what? You don't know how to care of yourselves. Let us do it for you. Just happens to be about $7 trillion there that we want to get our hands on. You want to get the fox in the hen house again, and you want to tell these people: Look, because you are so stupid, we will help you.

You know what? I don't think they are stupid. When I look at a model that is $19 trillion in the red, I don't know of any of us that would go to the United States Government, the Federal Government, and ask to be their business consultant, how they would save their business. Are you kidding me?

We go through this all the time. I believe this: The people that do what I do in the private sector always think that if I can somehow arrive at a model that allows the people I work with every day -- not my employees, my associates, my team members, that are all trying to get to the same place -- if I can make it each day for them to get up and say, "I can't wait to get there because they are helping me put a roof over our head, food on the table, clothes on the backs of our kids, and preparing for our future," that is what they do. I am fed up with the Federal Government trying to stick their nose in places where it doesn't belong. Hell, they can't keep themselves in the black. They never have.

Now my question to any of you is this. What is it about this government that would make anybody think that them getting involved and talking about best interests is a good thing? Please tell me that we are acting in the best interest of every single American with the way we are operating this company and telling them to have faith in the future. I don't think that all of us can say they are acting in the best interest, because we can't print our own money, the Federal Government can, if we did it, it would be counterfeiting, but that is okay, at least at this level.

Is there anything any of you see as an upside to this proposal? We have confused people to the point where they actually think they can't get out of bed by themselves anymore. Not the people I represent and not the people who raised me. Anybody. What is it about this that is so -- just a shaft of light from the heavens that somehow the Federal Government can keep you safe? My God, the running footage doesn't show that. Does anybody speak up for these people?

Mr. Stevens. Congressman, I would say this. From the beginning of this process, almost 6 years ago now, the ICI, on behalf of the mutual fund industry in the United States, was very supportive of the idea of DOL modernizing its fiduciary standard for investment advice and services. It was a good project. Had it been pursued in an appropriate way, we wouldn't be having these hearings, this wouldn't be so controversial.

What they have come with after 4 years, with enormous amounts of input, is far worse than the current system -- far worse -- and it will be very, very damaging.

Mr. Kelly. Okay. Well, thank you all for being here, and please --

Mr. Silvers. Congressman, you forgot Social Security, Medicare, food safety, the Coast Guard, lighthouses. The entire fabric of civilization is what you are criticizing.

Mr. Kelly. Mr. Silvers, thanks for being here.

Mr. Silvers. Thank you.

Chairman Roskam. Mr. Rangel.

Mr. Rangel. Thank you, Mr. Chairman.

I was just thinking, when I marched with John Lewis those 54 miles from Selma to Montgomery, I had no confidence that my government intended to bring some equity into the voting system or the civil rights system. And I asked them: Why did you put your life on the line to do it? And you told me you had faith in America. I was doing it for the press conference that concluded. And you were right, I can't imagine where I would be today without the Federal Government and civil rights and the hope that we, this great country, cannot become a better country. So whatever we dislike, we are here in this Congress to be able to say that we represent 700,000 people, we want change.

Now, Mr. Chairman, I know that under political rules which Democrats and Republicans have there is a tendency to bring witnesses based on those that support the position that the majority has. But in this particular case, where everybody wants to protect the workers from being given advice where the adviser is going to have a conflict of interest, it doesn't appear to me that this panel represents a fairness in those who support and oppose.

So I guess I have to ask, is there anyone sitting here, besides Mr. Silvers, that believes that giving advice to an investor should have a fiduciary relationship to avoid conflicts of interest? Do you believe that there should be that high standard?

Mr. Stevens. If I could respond, Congressman Rangel, the fiduciary standard is the highest one known to the law.

Mr. Rangel. You bet your life.

Mr. Stevens. It grows out of a relationship of trust and confidence. And when any financial adviser enters into or invites that relationship of trust and confidence, they absolutely should be held to a fiduciary standard.

Mr. Rangel. But they are not. But they are not. Under existing law, companies are not held to that standard.

Mr. Stevens. If I might just add.

Mr. Rangel. Yes.

Mr. Stevens. That relationship of trust and confidence does not arise in every single interaction that characterizes our 401(k) or individual retirement account servicing or information or help or assistance. And that is the issue. We need a clear line for where there is and where there is not that kind of relationship.

Mr. Rangel. Listen, I don't care how limited you may be in this concept, but it seems to me, if I am making a living on commissions, or as a result of my advice I stand to increase my earnings, the first thing I have to do is to believe in my product. And so it could very well be that I am selling what I think is best and I am making a heck of a profit, and I certainly am not violating fiduciary relationship if I truly believe this is the best for the client.

Now, somebody came up with the idea that investors, people who go into the markets like they are going to a room with no light on and they are depending on people who make a living out of giving advice, and all we are saying is that, if you deliberately give advice that you know you are going to make a profit, and that would be the standard, is there anyone that is opposed to that?

Mr. Campbell. Congressman Rangel --

Mr. Rangel. You know, I don't want to do what Mr. Lewis has done, but I don't want you to try to mumble about whether or not this basic concept that you shouldn't deprive -- somebody said from the White House -- pardon the expression -- that investors lose $17 billion a year because their advisers are doing the wrong thing, not making mistakes, but doing the wrong thing.

Now, I am a lawyer, as so many others, and there are times that I am ashamed of my profession because of a handful of people that would rather get a fee than to do the right thing, and I wish we had a higher standard than fiduciary relationship. But, you know, it is not fair to defend this thing with Mr. Silvers representing workers and all of you saying give us a break.

None of you have come and talked about the theft that has taken place in violating people's rights when you know the tremendous change we had from defined benefits. Everyone would say: When I retire, this is what I expect every month. Now they say: When I retire, it depends on the market. And they have no idea whether the advice is good or bad.

But under the system now, all of you can make a commission based on the advice that you give, and we here believe that is totally, totally unfair. I think the panel balance is unfair. But, you know, you are not helping yourselves or helping us to make a judgment. You may say that this is too strict, but all of the years that we have had this, have you put out any papers to advise us how we can make certain that the advice that you are giving isn't based on a conflict of interest? I haven't heard anything.

Chairman Roskam. The gentleman's time has expired. We will leave it at that rhetorical question.

Mr. Holding.

Mr. Holding. Thank you, Mr. Chairman.

Mr. Rangel. It wasn't rhetorical.

Mr. Holding. Thank you, Mr. Chairman.

In my brief tenure in Congress, I have heard consistently about this issue, folks that visited me at home and folks that visited me here in Washington, professionals, and everything that I have learned from them, my constituents, is reflected here in today's panel of witnesses. So it leads me believe that the administration in their efforts here, they are ignoring facts in favor of ideology.

I think it is important to remember that administrative agencies don't have rulemaking power on their own. They can only act in accordance to a congressional delegation. Of course, when Congress delegates that authority, you know, we assume that the agencies will all rely on facts and not politics.

So the administration thinks we need this new fiduciary rule because a White House study claims that biased financial advice leads to a loss of $17 billion in investment savings every year. Yet, what this study completely ignores -- and it should be obvious -- is that financial advisers might actually provide good advice, and that would explain why so many people continue to use them.

So to Mr. Campbell and Mr. Stevens, don't you think it is true that financial advisers might actually provide, and often do provide, good advice that increases people's savings?

Yes, Mr. Campbell?

Mr. Campbell. Yes, sir, I do. And I think one of the other faults in that study that the Council of Economic Advisers cites is they don't take into account the other value that advisers provide. For example, encouraging workers to save earlier and to save more, which is the number one determinate in your retirement outcomes, actually, is the amount that you contribute and how early you contribute.

Mr. Holding. So, Mr. Stevens, you would agree that people can actually make good choices about their financial decisions?

Mr. Stevens. Yes, they can.

Mr. Holding. People have that ability.

Mr. Stevens. And I think they do, Congressman. I will give you evidence of that.

In 2008-2009, at the worst of the market, we went out to well over 3,000 U.S. households and asked them how they felt about their defined contribution plans. Many of their accounts were

down 45 percent. The poll results were really striking. Three-quarters of them remained confident even then that these arrangements were going to help them achieve their retirement and 90 percent or more liked the fact that they had control over them, that they saved every 2 weeks, that they had got deferral tax treatment. That was at the worst point of the financial crisis.

So I think millions of Americans who participate in the system would not recognize my colleague Mr. Silvers' description of it as riddled with corruption and rip-offs to them.

Mr. Holding. Do you agree with the view that this proposed rule would also limit people's choices?

Mr. Stevens. It would limit choices. It would limit services.

Mr. Campbell. Absolutely, I would agree with that. Yes, sir.

Mr. Holding. It would give the regular folks out there fewer choices on how they can invest their money. So the administration assumes that people can't make good choices, so it is taking those choices away. That is the end result that we have here.

Mr. Campbell. Yes, sir. I believe that is correct.

Just as an example, I have an IRA account that uses commission-based compensation. I intentionally chose that because I don't trade frequently, and that is, in fact, the best option that is in my best interest.

But I think one of the likely effects of this proposal would be to force more and more advisers into a fee-based compensation model, which would not be in my best interest if I have to convert my IRA account to that, and also is contrary to the reverse churning investigations that are a priority for the SEC, which looks for exactly this, moving people from commission-based accounts to fee-based accounts because it makes the adviser more money.

Mr. Stevens. In addition, it requires the person to pay twice, and that is one of the things we need to understand about this proposal. By pushing people out of commission-based accounts, having already paid commissions and expecting to receive services for the payments of the commissions they have already made, into fee-based accounts, they people are going to be made to pay twice.

Mr. Holding. Right. Right.

Thank you, Mr. Chairman. I yield back.

Chairman Roskam. Mr. Crowley.

Mr. Crowley. Thank you, Mr. Chairman. Thank you for holding this hearing today as well. I am pleased that we are doing this timely, as well, given the DOL's expected rules announcement.

The number of Americans who have access to a traditional pension plan who are very often represented by organized labor has been shrinking drastically over the past 20 years. So, first, let me thank the AFL-CIO for being here and for their work in defending the right of a pension for their membership and, through that work, for all Americans as well.

A pension is not a lottery-winning check, but a small promised stipend earned after a lifetime of work. I see no reason to shame people who work for decades for wanting a small level of financial protection in their retirement years. But these traditional pensions are being offered less and less to workers, particularly to those workers not protected by organized labor. The result is the responsibility for saving for a worker's retirement has moved away from the employer and on to the employee in the form of 401(k)s and IRAs.

I have put forward a package of savings ideas that I call Building Better Savings, Building Better Futures that would give workers and families the tools they need to build wealth and save for retirement at every stage of life. So I am glad we are talking about how to help people save, which includes managing their savings.

As Mr. Silvers said in his testimony, many of us don't have the expertise to manage our money perfectly. That is why we need financial advisers who are looking out for our best interests. I think we all have the same goal of ensuring that financial advisers are giving advice in their customers' best interest while preserving the customers' access to valuable retirement products. The issue is how we get to that point so that we have a final rule that is workable in achieving what is our shared goal. A number of questions remain outstanding on how to make this rule work, questions that need to be addressed before a final rule is issued.

I understand that because of the timing of the comment period that we are in right now, that the Department of Labor could not be a witness today. But I do look forward to the Department responding to a letter, led by Representative Gwen Moore and signed by myself and more than half of the House Democratic Caucus, about some of the concerns within the proposed rule.

Mr. Stevens, we have heard that, if this rule is finalized as is, a number of brokers have said that they would stop providing investment advice to savers with smaller accounts, which was brought up earlier. I have been told this is because chief risk officers and legal counsel are concerned that there is too much ambiguity in the proposed fiduciary definition and too many compliance burdens in the proposed BIC exemption. For example, requirements for a contractual certification that can't be met, which leads to too much risk of a class action litigation.

Could you comment briefly on this? Then I have one other question.

Mr. Stevens. I think what you are hearing is an accurate reflection of sentiment that is very broad and very deep. In fact, I would say, Congressman Crowley, that my analysis of the BIC exemption is that it is so freighted with requirements -- voluminous disclosures, a triparty contract that has to be finalized even before there is any dialogue, and now new liabilities under State law and potential class actions -- that it almost seems as if the Labor Department never intended for that exemption ever to be utilized.

We have urged in our comments a very significant streamlining of that. In fact, I want the subcommittee to know, in all of our comments we simply haven't said "no." We have provided extensive recommendations to the Labor Department about how its rule could be improved and made workable, and we did so in that area as well.

Mr. Crowley. Let me reclaim my time.

On the flip side, the retirement middle market is a $7 trillion market. How can any broker or firm just give up on this market? Wouldn't brokers just adjust to the new rules?

Mr. Stevens. What you are going to see are new business models. But if you would consider the IRA market, there are over 12 million households that have an IRA of $25,000 or less. Now, these would be young workers. They might be people of lower income. They might be people of less financial sophistication. The range of assistance they get under this model is not going to be what they enjoy today. In fact, Secretary Perez says, well, they will just have to rely on robo-advisers, which is an automated or Web-based service. Not necessarily going to work for 12 million Americans.

Mr. Crowley. Let me follow up with Ms. VanArsdale and Mr. Specht on that issue of robo-advisers. We are hearing about them, that they are being billed as the financial brokers of the future that can provide unbiased information while serving as fiduciary.

Could you talk about your services and how they differ from what robo-advisers do?

Ms. VanArsdale. I think that robo-advisers might be okay for some people. What I would like to see, though, is that people have a choice and that our clients can choose if they want to have that type of advice where they go online or where they research or where they make a decision with a phone call and go in and make a decision on a fund or how to invest in something.

What my bigger concern is, is that, for people that aren't comfortable with computers, that can't even get in to know how to rebalance their current 401(k)s, who is going to help them do all of those things? That is a concern. But, more importantly, it really is, when the market does go down, to have people perhaps make an incorrect decision about moving out of the market when we might have a recovery.

When is the right choice or what are the questions that aren't being asked are bigger concerns.

Chairman Roskam. Mr. Specht, just quickly since you were asked specifically.

Mr. Crowley. Thank you, Mr. Chairman.

Mr. Specht. I work in a blue collar community. I have many union workers, my wife. Some of them have defined benefit plans, those real old things called a pension, and a lot of times they are very, very good. A lot of times they are funded properly, they are going to give an income to people. We have a Social Security system which will give an income to people.

When I sit down and work with people I don't know what their needs are. The robo-adviser, to directly answer the question, isn't going to see, when I am sitting with a husband and wife and they look at each other and they have a question, they are not going to see that, a robo-adviser or a questionnaire that you fill out online isn't going to see that. And that is one of the things, one of the benefits that I can provide working in their best interests.

Mr. Crowley. Thank you, Mr. Chairman.

Chairman Roskam. Mr. Renacci.

Mr. Renacci. Thank you, Mr. Chairman.

I want to thank the witnesses for their testimony and for being here.

You know, I always tell people that so many rules here in Washington are made by people who have never had to live within the rules they make. I think this one is one of those rules.

It is interesting, because I grew up in a blue collar union neighborhood and family, and I don't think any of my neighbors thought like Mr. Silvers thinks. My neighbors and my dad trusted their investment adviser, and, yes, they had their ups and downs, but they also had trust, and they moved forward, and they did fine.

I also started a business, and I actually started a 401(k) for all of my employees. I had close to 3,000 employees at one point in time. I actually met with the employees, and I told them, and many of them weren't making a lot of money, but I said: "If you put a little bit away, if you put a bit away, we will match it, and it will grow, and someday you will have some dollars down the road for a retirement account."

I still always remember the classic, the one guy came to me and said: "You know, Mr. Renacci, but that is one less beer I am going to have on Friday.

I laughed, and I said: "Yeah, but you are going to have a lot more beers when you are 60 years old and you have some more money."

So these are the kind of stories that I remember. I remember where these individuals put a little bit of money away, we matched it, they had the ability to get investment advice from advisers, and my biggest concern is this rule won't allow those things to happen anymore. I still have people come up to me 10, 15 years later and say: "I still have an account. It is still growing." I said: "Keep that in mind."

Because I used tell them the story about when I was 20 years old. I put $100 away. That $100 today is still in that same account, and it has $39,000 in it. I say: "It can be the same thing for you if you do the right thing and you listen."

Now, there are some bad guys out there. Those are the ones I think Mr. Silvers talked about. Maybe that is the ones he runs into more often than I do. However, there are some good

investment advisers out there too. My concern is this is going to take away from those small accounts that we are talking about.

It is interesting, my colleague Mr. Crowley talked about a letter that the Democrats have signed onto. I think this issue is something that is bipartisan. We agree there are some concerns with this rule. One of the things in their letter says: In order to have a successfully implemented rule, it is vital that the proposal doesn't limit consumer choice and access to advice, have a disproportionate impact on lower or middle-income communities, or raise the cost of savings for retirement.

Mr. Campbell and Mr. Stevens, will this rule that we are talking about do just that?

Mr. Campbell. As proposed, I believe it would. As Mr. Stevens explained in great detail, the BIC exemption has a tremendous number of requirements and difficulties, making it questionable whether it can even be used as it is proposed. That would cause a lot of financial advisers to have to change their business models. They are looking at additional expenses. They are looking at additional insurance policies. There are all sorts of expenses associated with that, which get passed on to, particularly, you know, the end consumer, the adviser, the individual, or the plan.

Mr. Renacci. Mr. Stevens.

Mr. Stevens. If I might just comment, it certainly would, and I think the Labor Department essentially acknowledges this. Secretary Perez has over and over talked about new models of servicing IRA investors emerging, and he keeps talking about robo-advisers. We find this new model to be promising. We always support innovations. And for some of the millions of households perhaps it is going to be good.

But, Congressman, it is ironic to me, this is the same Labor Department which has never authorized retirement plan sponsors or service providers to deliver plan documents by email. Why? Because of some vast digital divide.

I would say also the Consumer Federation of America, AARP, and, to my knowledge, the AFL-CIO have also opposed electronic delivery of documents, whether DOL or SEC. Why? Because of a vast digital divide in America. But that divide apparently disappears when it comes to putting millions and millions of Americans into robo-advisory relationships. Something here doesn't make sense to us.

Mr. Renacci. I would agree.

And, again, that is what I said. I think this is something my colleagues on the other side and us, we all agree, we have got to make sure that this middle America, those people that have less than $100,000 in savings, don't have some of these fees.

Are most investors, especially those that are not wealthy, really better off with a fee-based account? I don't know who wants to answer that.

Mr. Specht. A fee-based account is going to take money out of your pocket -- you, the investor's pocket -- up front, where, the example I gave earlier, a commission-based account if the product or the service or solution is correct, will spread costs and drastically reduce those costs over the timeframe.

Mr. Renacci. Well, I would just tell you -- and, again, I know I am running out of time -- I was also a CPA. So, when people came to my office, I used to say to them: "Don't pay up front, because when you pay up front, you never know what you are going to get later." That is an example of this rule.

And I yield back.

Chairman Roskam. Well, we have two first-time callers, long-time listeners who are joining us on the committee today. And we are so pleased to welcome Mr. Neal.

Mr. Neal, you are recognized.

Mr. Neal. Mr. Chairman, with all due respect, you were in high school when I joined this committee.

Thank you, Mr. Chairman.

Just a couple of brief comments.

As we have moved away from the defined benefit and defined contribution, it seems to me that the consumer relies more and more on sophisticated information. The concern here is that we not drive away the individual at the lower end of the scale that needs that advice.

Wealthy people are always going to find a way to secure the necessary advice to get the best interest rates, to get the best investments, and they are going to be able to do that. But trying to make sure that we have an integrated approach, allowing people across the spectrum to secure this advice, ought to be part of our primary goals. Everybody agrees on this panel and that panel we need to get this right. That is the point that is in question here today.

So, Mr. Chairman, before I ask a couple of questions, might I say to you, since we agree on client first, we agree on transparency, we agree on the notion of addressing the conflict of interest position, if necessary, perhaps we could work on a legislative solution. Is that something that you might be prepared to entertain?

Chairman Roskam. Absolutely, Mr. Neal. Yeah, I think that what is being demonstrated today, the nature of the concern, and the subtext of all of these things, there is a theme, and the theme is there is a legislative remedy that is right here. I leaned over to Mr. Lewis during some of the discussion, and I said: "I think that this is an area where we can really work together all the way around."

So I will commit to work wholeheartedly with you in good faith, and look forward to a good bipartisan product.

Mr. Neal. Thank you, Mr. Chairman.

Mr. Chairman, is there any member of the panel that disagrees with the notion that the client should be first? Would you also state that rather than a nod?

Mr. Campbell. I agree.

Mr. Stevens. I absolutely agree, Congressman.

Ms. VanArsdale. One hundred percent.

Mr. Specht. Absolutely.

Ms. Owen. Yes.

Mr. Silvers. Yes.

Mr. Neal. And, secondly, could I ask this question as well? Does anybody want to volunteer the sort of advice that they offer to a client in these instances? We heard earlier from a couple of the panelists. But how does that work when you talk to -- generally, the client, I assume, is approaching you and there are a series of products that are involved.

Mr. Specht, maybe you want to take it.

Mr. Specht. Each individual circumstance is unique, because your particular needs, I don't know what they are. Your particular needs, your particular needs, I don't know what they are. The only way to find that out is to have a communication, to work together. It is the only way it will work.

There are a multitude of products and solutions that may fit depending on the circumstances. And I am held to -- whatever word you want to call it, standard or whatever -- on a daily basis. Every time I work with a prospect or a client, there is something that is put in place, they are going out and checking the competition to find out what might be available -- we usually talk about that up front -- and I am always on the block to make sure: "Yeah, you are still doing a good job." They want to make sure. And what is interesting is they keep coming back to do repeat business.

Mr. Neal. Thank you.

Thank you, Mr. Chairman.

Chairman Roskam. Mr. Smith.

Mr. Smith. Thank you, Mr. Chairman.

One of the biggest problems with this fiduciary rule is how it limits access to investment advice. Millions of people rely on financial advisers, not just to enroll them in plans but also to educate them and help make good decisions on saving for their future.

My question right now is to Ms. VanArsdale and Mr. Specht. You both are financial advisers, correct?

I would just like to know what you have to do right now to give advice to your clients.

Ms. VanArsdale. Well, I think, as I talked about in the testimony, the first thing is listening, understanding, and finding out what is important to the client, but then also sharing -- and I know we have talked a lot about commissions and a lot about the products that we sell -- but I think that part of the conversation that we haven't talked about is helping people understand how to reduce debt, how to save money in the bank, how to pay off college loans, how to help people understand that it isn't a -- this is a piece of the pie. This is not the only part of what we do on a daily basis.

So I think it is much broader than just talking about, oh, you want an open -- "Oh, sure, bring me your money and let me put that right into this investment and this is the best choice." That is way down the road.

Mr. Smith. Would, you think this rule would make it much harder for people to get financial advice?

Ms. VanArsdale. I think that it is cutting it up in pieces that makes it very difficult to go in and look at a holistic approach and to understand what is really important at a bigger -- at a higher level for all clients, but especially, you know, our younger, newer investors who really just need some help and guidance to get started.

Mr. Smith. To me, it appears like the administration is just trying to make a one-size-fits-all approach for financial advice and products, and as with everything else, that typically doesn't work very well.

I, personally, would like to talk about the role which impacts millennials. I am one of the Members very close to the millennial generation. Some would argue I am part of the millennial generation, but these are young people I am talking about. These are individuals who are just starting out in the workforce. They have fewer savings and investments than folks that are closer to retirement.

You know, we as a society want to encourage more people to save, to prepare for retirement. How do you think this rule affects millennials?

Mr. Specht. I can give you an example. I have a client that called me one evening and said that his son telephoned him and said: "Hey, I got a great job offer from a new company." He was

young, out of school, first job. He had a 401(k). And he said: "Hey, Dad," the way the father was explaining to me, he said, "Hey, Dad, I am changing jobs. I talked to the HR director and they said I have to take my 401(k) with me. What does that mean?"

The father called me, and I explained to him what that meant and said: "Let's talk with this young individual." He would not have known unless he would have been able to talk to someone.

Mr. Stevens. Congressman, could I answer that if there is time?

Mr. Smith. Sure.

Mr. Stevens. Because, in my testimony, I describe -- I am the father of four boys, and one of them is a millennial. He just finished his first job, had a 401(k) balance, going to another job across the country. He said: "What do I do."

And I said: "Why don't we get on the phone with one of America's great mutual fund firms, and they can talk to you about that."

He spent an hour with a call center representative, who described all sorts of options -- what a rollover IRA was, what the advantages of that in the context of a working life where he might be working at many different places. After that hour, which was at no cost to him, he decided that he was going to put his money in a target day fund with that firm, which would automatically rebalance over a long working life. He got to a great place. But I will tell you, that conversation could not take place the way that it did if this rule were adopted.

Mr. Smith. Mr. Chairman, I would like to enter into the record this. It is by the Insured Retirement Institute, and the title is, "Will Millennials Ever be Able to Retire?" In this, it provides that the generation that needs more financial advice than anyone are, of course, the millennials. Sixty-two percent believe that they need easy access to a financial adviser to plan for their future and their retirement.

Ms. Owen, I would like to ask you, you employ, I would say, numerous millennials.

Ms. Owen. Yes.

Mr. Smith. How do you think this rule affects your employees?

Ms. Owen. Well, I think it will greatly affect my employees. We kind of enticed them into savings when we started the 401(k) plan. Obviously, if your employer is going to hand you money, all you have to do is match it, you are going to do it. But without us even approaching this, I can tell you, you know, they are young, they are getting married, they are having babies, they are going out at night, they have no interest at all in savings of any kind, especially for retirement, because it is so far in the future.

So if it is harder for me to offer this plan or more expensive for me to offer this plan and I can't do it, I am fairly sure that they will not.

Mr. Smith. Thank you, Mr. Chairman.

Chairman Roskam. On your document in entered into the record, without objection, so ordered.

[The information follows: The Honorable Jason Smith]

Chairman Roskam. Mr. Larson.

Mr. Larson. Thank you. Thank you, Mr. Chairman, and thank you, Mr. Lewis, for allowing us the opportunity to speak here this morning as well.

I have thoroughly enjoyed the discussion. I think it is an important area, something that I refer to as the "Tulio Russo rule." I am sure that no one on the panel and perhaps most here on the dais have not heard of Tulio Russo. But Tulio Russo was my mother's debt agent, and he used to go in a Federal housing project door to door and collect his debt.

He would do so, and my mother trusted Tulio because he would sit in her living room and make sure, with a family of eight children, that she was setting aside her $2.25 a week, with the idea in mind that that would, in the event something happened to my father, cover our expansive mortgage in Mayberry Village. But she trusted Tulio Russo, and he was a human, compassionate face that gave advice.

So the issue here, it seems to me, is that -- Mr. Silvers, I think, has provided excellent testimony. He is not the enemy here today, he is actually an ally to make sure that everybody gets this right, but does it in a way that we don't overstereotype and pretend that everybody is Bernie Madoff, on one hand, but, on the other hand, make sure that we recognize everything that is important about a human transaction.

I certainly am very resistant of robos, though I am sure that they have some use and value, but not nearly as much as Tulio Russo. And what is good about the example of Tulio Russo is that I can't imagine Mr. Russo ever talking to my mother and saying: "Mrs. Larson, before I can talk to you, sign here on the dotted line."

And so, from a real practical and pragmatic standpoint, that is what we are talking about here today. And so it may need -- and I commend the chairman and Mr. Neal for, perhaps, a legislative remedy in these complex days -- sometimes writing legislation helps clarify -- not always -- but sometimes it helps clarify a situation here.

And what we are talking about here is the difference between information and knowledge -- a knowledge that, in my humble opinion, is better distributed when individuals who are certified and recognized in their States are allowing the opportunity, as Mr. Neal spoke about, to speak to people in desperate need of financial literacy.

I think there will come a time when we will recognize that the AFL and the CIO and the AFL-CIO and financial institutions and people that are entrepreneurially involved will lock together in terms of requiring financial literacy in the workplace and disseminating that information in a very important and critical manner so that everyone gets to make a choice, everyone has the opportunity to avail themselves of their Tulio Russo.

And so, Mr. Chairman, I am a signer to Gwen's letter. I appreciate the opportunity to speak here today.

I applaud Mr. Silvers for always recognizing what we should be aware of in terms of various conflicts of interest. But I also commend the professionals who day to day go about their business and understand the importance and viability of that human contact and disseminating to people like my mother what an important financial decision this is.

Mr. Renacci talked about the value of compound interest. It is true all across the board. We are closer on this than we are father apart. It is just a matter of doing the right thing and getting this done right. And if it requires legislation, so it be it.

Thank you, Mr. Chairman and Mr. Lewis, for allowing us the opportunity to speak.

Chairman Roskam. Thank you, Mr. Larson.

Mrs. Black.

Mrs. Black. Thank you, Mr. Chairman, for allowing me to sit in on the committee. It has been a very interesting conversation today. I must say, as a healthcare worker, this is not one of my areas of expertise, and I have certainly learned a lot today. Certain words have continued to come up -- "choice" being one of those, "trust" being another.

I appreciate, Ms. VanArsdale and Mr. Specht, as you talk about the clients that you have worked with and given us some real-life situations of how you can really make a difference on a human level in helping them to make those decisions.

One thing that has not been talked about is cybersecurity. Mr. Stevens, you talked a little bit about the cybersecurity and perhaps the breaches when you have all this private information that is out there, and we have seen a lot of that lately, even within the government programs that have not protected people's personal information. So that is a huge concern, but have you seen anything out there about if we were to foist this on people that didn't have connectivity?

I happen to represent an area of my district, about 50 percent of it is very rural. We are having one heck of a time getting connectivity for the folks that live in my district, and most of these places that are very rural, it is the blue collar worker that would be affected. So if they are forced into this system where they have to use a robo rather than a human, I really worry about what happens to them. Have you seen anything out there in your study of the issues related to that?

Mr. Stevens. I have not seen anything specific to that, Congresswoman, and, obviously, there may be parts of the country where high-speed Internet connectivity is not available, and that would be very much a disabling reality for people.

My comments were more directed towards the appropriateness or desirability from a personal point of view of interacting on a Web-based platform or algorithmically or some fashion rather than the kinds of personal interactions that others on the witness table here have talked about in their own businesses.

Maybe that is going to be good for some. But, again, I go to this figure. There are more than 12 million U.S. households -- and, no doubt, many in your district -- where the IRA balance is $25,000 or less and where a fee-based account is, for all intents and purposes, not going to be feasible. And so the question is, how are those people going to be served?

Mrs. Black. Thank you.

I guess I am also trying to really put my finger on the actual problem here, because it doesn't seem to me that something is really broken that we have to fix. It seems that there has been almost a forcing of something to happen that really isn't broken.

Mr. Campbell, can you help me? Can you put your finger on something to say: "Look, this is really broken, and we have to do this now because people are being hurt"?

Mr. Campbell. Well, I think, in every human endeavor, there are going to be some bad actors and some bad apples. And I wish, instead of taking this comprehensive approach of redesigning the entire system of retirement advice, the Department had, instead, focused on identifying and going after those bad apples, which is part of what its enforcement program is intended to do.

One of my concerns about the approach they have taken is that, as I mentioned in my prepared testimony, best interest and the standard they are actually putting out here are two very different things. The standard they are putting out captures all sorts of normal and useful activity where there is just a structural difference in price from one product to another. You know, an adviser to a 401(k) plan might charge 25 basis points for that whole plan, but when they talk to one individual with an IRA, they can't provide it at that lower cost. It has to be a higher cost. It is just a different product.

The Department's proposal would make that a conflict of interest that would be prohibited simply because there is this differential in cost. And so I think the approach they have taken, to the extent there is a problem that needs to be resolved, isn't addressed by this approach.

Mrs. Black. So the old axiom, "If it ain't broken, let's not fix it," and giving people an opportunity and choice, I think are two of the things I am taking out of here today besides the human factor, which, being a nurse, I think that is so ultimately important.

Thank you, Mr. Chairman, and I yield back the balance of my time.

Chairman Roskam. Thank you, Ms. Black.

Just a couple questions in closing.

It seems that one of the things that we are seeing is that, under the proposed rule, the government would be pushing folks into these Secure Choice plans. There is a sensitivity that I have, coming from Illinois -- and you know just what a complete goat rodeo the Illinois pension system is -- do you have an opinion as to what ends up happening, and isn't it sort of a false sense of security that is being communicated?

And so, Mr. Stevens, I hand this to you. If somebody is being told, "hey, come on in, it is all fine, and we are going to put you out of this private-sector savings plan and we are going to put you into this Secure Choice," isn't that really an overcharacterization, and isn't it really less secure than most people think? Ought we be cautious about putting people into the so-called Secure Choice plan if it is just going to be run by State and local officials?

Mr. Stevens. Chairman, I think you have your finger on something that is extraordinarily important. And, again, it is puzzling to us, because what we have been talking about in the DOL fiduciary rule, as in the context of 401(k)s and IRAs, a massive overhaul of the system with tremendously strict new regulations being proposed; whereas the project that apparently the DOL is now endeavoring in the rules that Brad described in his testimony is to deregulate State-administered plans so that they won't have, presumably, the same degree of ERISA protections.

They raise questions with respect to the Federal securities laws, too, and how they will apply -- governance issues, all sorts of very, very fundamental things.

But we very much worry that if we have a patchwork quilt of State-administered plans with fewer requirements, employers will say, especially in this highly litigious environment we live in, "Well, you know, to heck with the 401(k)s. I am just going to go into the State-administered plans," and the retirement system, which has been so very successful, that we have built up over many years now -- and I think we need to recognize that the successes and strengths of that system will be put at risk. And that, it seems to me, deserves the attention of this committee.

Chairman Roskam. Okay. So break that down a little bit. So Ms. VanArsdale's clients, my constituents in Chicagoland, I am speculating, but here is my speculation. I think that, based on all of the drama and all of the real consternation and anxiety around the Illinois pension system, my hunch is that if you had clients that said, "I would rather be into some other more secure private-sector program than living precariously on all the politics around the Illinois pension system," they would rather be in a more secure system. Is that fair?

Mr. Stevens. I would assume that is certainly the case, yes.

Chairman Roskam. Yeah.

Ms. VanArsdale?

Ms. VanArsdale. I think the fear that that has been created because of all the conversation in Illinois has just -- if we told the clients that we had to go into a State program that were not State employees, they would move.

Chairman Roskam. Right. Right.

Ms. VanArsdale. I mean, the State, it is slightly embarrassing, and they are scared. They were told something for 34 years; if you do this and you follow these rules, this is what you are going to have on this day. And now, 4, 5, 6 years out before retirement, it is changing.

Chairman Roskam. It wasn't called Secure Choice, but it was presented as a secure choice. And, as it turns out, that was a false presentation, that was a pretense, and it is anything but secure.

Mr. Campbell, I just want to follow up just quickly, and it was a point that Mr. Stevens just made. It is my understanding that California has now said that they are going to be moving forward under their own program in anticipation of the DOL initiative here.

Can you walk through what Mr. Stevens mentioned a minute ago? That is, that they are proposing to do it without ERISA protection? Isn't there just an irony there that just is incredible? Can you speak to that?

Mr. Campbell. Yeah, I think that is one of the things that I think Congress should look at closely when DOL comes out with this proposed rule, is exactly what type of latitude are they providing to the States. Is it simply an on-off switch, that, no, we are saying that ERISA won't apply to these, and, therefore, the protections that come with ERISA don't apply?

If you look at the program in California, also called the Secure Choice program, there is, I think, some ambiguity as to exactly what, at the end of the day, the State may end up doing. It starts out as a payroll deduction IRA approach, but it is not clear that it would end there. There may be guaranteed investment returns, and then that raises questions of, well, how are those returns guaranteed? Who is guaranteeing them? Are these funded promises? If they are funded, funded by whom? Who is making the investment decisions behind those funds?

These are all questions that the ERISA structure has clear answers for and a clear history of protecting workers. Again, I am not suggesting that States don't have good intentions or may not be trying to do things that they think are in their citizens' best interests, but I think there are some real questions Congress should look at before it allows an agency, by regulation, to essentially do away with the ERISA preemption that has protected workers for over 40 years.

Chairman Roskam. That is good insight.

I know I speak for everybody on the panel when I thank every one of you for your time today. It has been productive and insightful. You sense from, I think, all of the members that we are interested in getting to a remedy here. And you also sense that some cooler heads, I think, can prevail, and there are some creative and interesting things that we can do.

So, on behalf of all of us here at Ways and Means Productions, we would like to thank our writers and directors.

We have received numerous comments and concerns from CBOE, IABA, State Farm, ACLI, fraternal organizations, and really a wide range of people. And the insight and input has been very, very helpful.

So, with the requisite words that everybody is supposed to say at the end of a hearing, the hearing is adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]

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