

**Congress of the United States**  
**Washington, DC 20515**

September 24, 2015

The Honorable Thomas E. Perez  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: Definition of the Term “Fiduciary;” Conflict of Interest Rule – Retirement Investment Advice (RIN 1210-AB32)

Dear Secretary Perez:

We appreciate the opportunity to comment on the Department of Labor's (the Department) April 14, 2015, proposed rule, RIN 1210-AB32 (the Rule), defining who is a "fiduciary" of an employee benefit plan or individual retirement plan under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986. We agree with the Department that updated retirement investment rules that align the incentives of advisors with investors will greatly enhance retirement security of millions of Americans. We would like to highlight several areas where we believe the Department could further refine the Rule to ensure it better serves the needs of retirement investors.

It has been widely noted, including by the White House Council of Economic Advisors study accompanying the Rule, that the landscape for retirement in America has undergone dramatic changes in the 40 years since passage of ERISA due to the shift away from defined benefit pension plans to defined contribution 401(k) and Individual Retirement Account (IRA) plans. The shift has necessitated that Americans be more involved in their retirement planning and to increasingly rely on advice from financial professionals.

The Department has stated that it is the intent of the updated Rule to accommodate various business models, compensation practices, and products. In large part, we agree that the framework of the Rule provides the flexibility to meet those goals, especially with the inclusion of the new Best Interest Contract (BIC) exemption, but we continue to hear from constituents, academics, providers, and investors that there are *specific* provisions of the Rule that may cause market disruptions and limit the ability of segments of the market to reasonably access advice. The following provisions are a sample of some of the concerns we believe need to be addressed.

### **Best Interest Contract Exemption**

The BIC is intended as a principle-based exemption that is central to accommodating various common business and compensation models that would otherwise be prohibited under the Rule, while retaining an enforceable “best-interest” standard to protect investors. We are supportive of this flexible exemption structure designed to ensure that moderate savers continue to have access to investment advice, but are concerned that there may be practical problems for providers to

implement the exemption as proposed. We believe that the Department could implement the BIC using a less prescriptive and more principles-based approach.

The Department should continue to work with stakeholders to identify solutions to the issue of how to bring new and existing customers within the BIC by providing for a legally-enforceable commitment on the part of advisors without the administratively burdensome task of requiring signed contracts prior to any communication. We also believe the Department should examine the current disclosure requirements contained in the BIC and consider options for simplification, including incorporating already required disclosures. The BIC should also harmonize the standard for offering proprietary products, as to not disadvantage certain business plans without a corresponding consumer advantage and in accordance with Section 913 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. Finally, we believe that it would be appropriate for the Department to make the BIC available for advice to small businesses maintaining participant-directed plans, notwithstanding the availability of the “platform provider” exemption.

### **Education Exemption**

The Rule narrows the previous “investment advice” carve-out established in Interpretive Bulletin 96-1 to exclude advisors from providing examples of specific investment products, plans, or alternatives. Models for asset allocation and general information regarding investment vehicles without some additional, tangible examples may be frustratingly vague for investors. We believe the Department would benefit retirement savers by maintaining flexibility for advisors to provide investment education.

### **Lifetime Income Options**

Annuities provide retirement savers a guaranteed lifetime income option, similar to what defined benefit pensions and Social Security offer. The Department has recognized the value of annuities as part of a diversified retirement strategy and has acted to encourage and facilitate the use of lifetime income options in retirement savings accounts. Unfortunately, the Rule’s emphasis on cost seems to discount the value of annuity products. As you know, the value of the guarantee may result in higher costs than other retirement options, but the guarantee offered by the annuity is a value to consumers not offered by other, lower cost options. Additionally, costs associated with setting up the annuity amortized over the life of the annuity may, in fact, bring the costs in line with options that initially appeared cheaper. The Department should, therefore, take steps to clarify that the Rule does not disadvantage lifetime income options.

### **Implementation**

Given the number of outstanding “Questions” and “Requests for Comments” in the Rule, we urge the Department to continue to engage and maintain a transparent dialogue with stakeholders and Members of Congress. This is an essential and important step, because feedback on potential changes will determine how successfully the Rule is implemented. We would also strongly encourage the Department to consider options for convening a small working group of industry professionals and consumer advocates to aid with the finalization of the Rule as to further ease any final implementation issues.

In addition, given the significance of the Rule to the U.S. retirement saving framework, we believe it would be appropriate for the Department to provide a safe harbor for "good faith implementation," especially given the complexity of the Rule and the many outstanding questions regarding a final rule. We believe this would provide an opportunity for small businesses and financial advisors to comply with the rule without the threat of lawsuits, while still ensuring that the Rule benefits retirement savers. A safe harbor would help ensure continued access to retirement investment advice and minimal disruptions to the current marketplace.

We strongly support and share the Department's goal to ensure financial advisors act in the best interests of their clients. 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 costs of saving for retirement.

A number of studies have estimated the retirement gap for Americans is between \$7 and \$14 trillion, with one-in-five Americans approaching retirement age having insufficient retirement savings. The Rule should close this gap and protect access to investment information to help Americans responsibly save for retirement. We urge the Department to continue to seek a balanced approach to both consumer protection and access to retirement investment advice for all Americans.

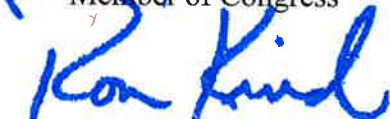
Sincerely,



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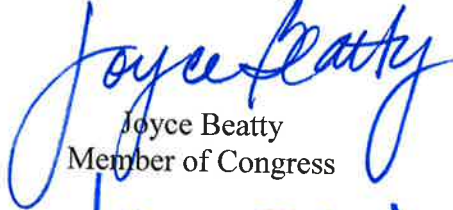
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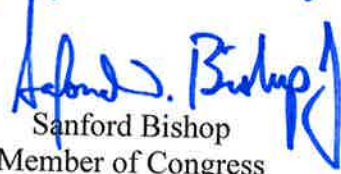
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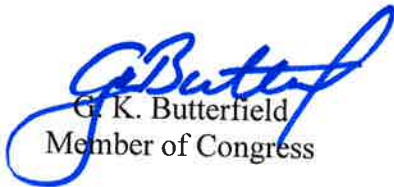
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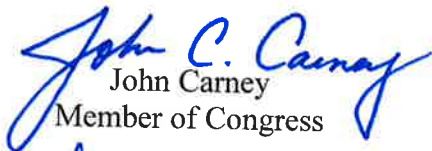
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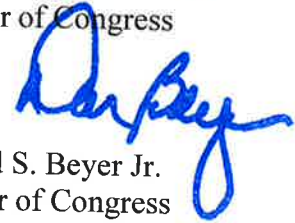
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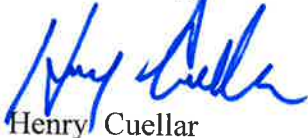
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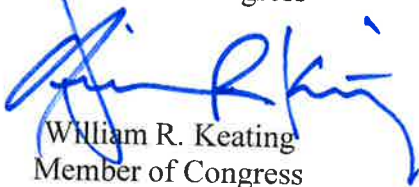
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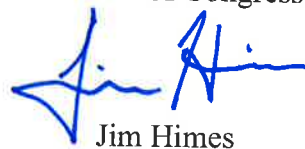
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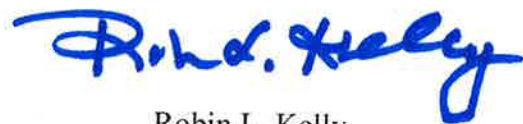
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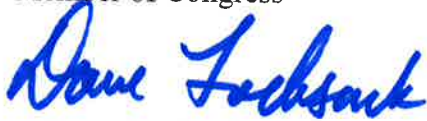
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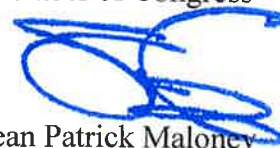
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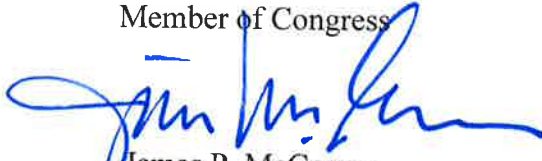
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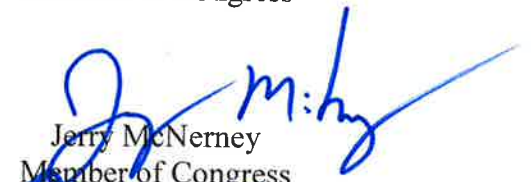
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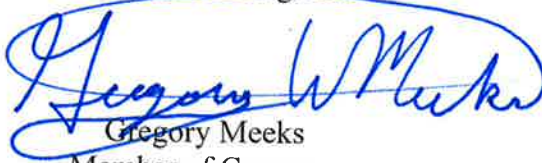
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