

Congress of the United States
Washington, DC 20515

March 17, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: Fiduciary Rule Examination (RIN 1210-AB79)

Dear Acting Secretary Hugler:

We write to express our strong opposition to the proposed delay of the Department of Labor's (DOL's) fiduciary rule, which is also known as the "conflict of interest" rule.¹

For far too long, certain unscrupulous financial advisers have been able to put their own financial interests and profit motives ahead of their retirement clients'. This insidious practice – known as providing conflicted advice – costs retirement plan participants an estimated \$17 billion annually.² The fiduciary rule is a responsible solution that will ensure workers and families get unbiased advice when investing their hard-earned retirement savings.

As you know, the DOL promulgated the final fiduciary rule after conducting a thorough, thoughtful, and transparent multi-year process. In fact, the final fiduciary rule is the product of more than six years of research, consideration of more than 300,000 comments, four days of hearings, and hundreds of meetings. It is unacceptable that now – roughly a month before implementation of the final rule is scheduled to begin – the DOL is carelessly proposing to delay it. Workers and retirement savers deserve better and have waited long enough. We believe it is imperative the final rule be implemented on schedule and without delay.

The DOL's proposed delay of the rule is opposed by many registered investment advisers, and consumer, labor and retirement groups, including AARP, Financial Planning Coalition, AFL-CIO, the Leadership Conference, and Consumer Federation of America.

¹ Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice, 81 Fed. Reg. 20,946 (Apr. 8, 2016) (to be codified at 29 C.F.R. pts. 2509, 2510, and 2550); Amendment to and Partial Revocation of Prohibited Transaction Exemption (PTE) 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters, 81 Fed. Reg. 21,147 (Apr. 8, 2016) (to be codified at 29 C.F.R. pt. 2550); Best Interest Contract Exemption, 81 Fed. Reg. 21,002 (Apr. 8, 2016) (to be codified at 29 C.F.R. pt. 2550).

² Executive Office of the President of the U.S., *The Effects of Conflicted Investment Advice on Retirement Savings* (Feb. 2015), available at https://obamawhitehouse.archives.gov/sites/default/files/docs/cea_coi_report_final.pdf.

Tellingly, nine in ten Americans reportedly agree with the DOL's rule.³ Those who voted for President Trump also appear to overwhelmingly support (65%) keeping the regulations in place.⁴

The DOL's proposed delay also ignores the fact that many industry participants, such as Morgan Stanley and Merrill Lynch, have already recognized the importance of providing a higher standard of care for their clients under the fiduciary rule and are taking steps to implement it. According to Merrill Lynch, the rule is "a positive step for the industry and great news for investors."⁵

The retirement savings landscape has changed dramatically since the rule was last meaningfully updated in 1975. Since that time, employer plans, particularly traditional defined benefit (DB) plans, have declined, leaving workers to grow their nest eggs through Individual Retirement Accounts (IRAs) and 401(k) defined contribution (DC) plans that have uncertain payouts. Similarly, financial products have increased in variety and complexity.

The final rule addresses this new reality of our retirement savings landscape by establishing additional and necessary fiduciary protections for workers. It does so by closing long-standing loopholes that have, for example, allowed advisers to shirk fiduciary responsibilities by only providing sporadic or one-time advice, even though such advice may influence workers' and seniors' most important financial decisions. Accordingly, the rule "will deliver large gains to retirement investors and a variety of other economic benefits, which, in the Department's view, will more than justify its costs."⁶

We believe the rule is reasonable and workable for advisers as the DOL provided appropriate relief that mitigates industry concerns and compliance costs. For example, the rule specifically allows firms to recommend proprietary products provided they make certain disclosures and act in the client's best interest. The rule also allows streamlined disclosures, provides flexibility in the timing for entering into a contract between a client and adviser, and grandfathers existing recommendations.

³ S. Kathi Brown, *Attitudes Toward the Importance of Unbiased Financial Advice*, AARP Research (May 2016), available at <http://www.aarp.org/research/topics/economics/info-2016/attitudes-toward-unbiased-financial-advice.html?cmp=RDRCT-PRI-OTHER-FINANCE-042816>.

⁴ Glover Park Group Survey of Trump Voters, <http://gpg.com/gpg-survey-trump-voters-december-2016/>, at 22 (Dec. 2016).

⁵ Merrill Lynch DOL Declaration, https://mlaem.fs.ml.com/content/dam/ML/ecommm/pdf/DOL_Declaration.pdf.

⁶ Department of Labor, *Regulating Advice Markets: Definition of the Term "Fiduciary Conflicts of Interest- Retirement Investment Advice, Regulatory Impact Analysis for Final Rule and Exemptions*, at 328, 326 (Apr. 2016), available at <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2/conflict-of-interest-ria.pdf>.

The courts have recently weighed in as well. As of this writing, they have rejected all of plaintiffs' arguments against the rule in three separate lawsuits.⁷ Specifically, the courts found that the DOL not only has the statutory duty to promulgate the rule under the Employee Retirement Income Security Act of 1974 (ERISA), but that its rule is a reasonable, workable solution that protects America's retirement savers. According to one court, any delay through injunction "will produce a public harm that outweighs any harm that plaintiff may sustain from the rule change."⁸

Furthermore, any argument that a delay is warranted to comply with the President's memorandum⁹ requiring the DOL to conduct additional analysis of industry product availability, disruptions and dislocations, and litigation costs is specious. First, the DOL already conducted ample analysis of the relevant issues, including the three issues listed in the President's memo. For example, the DOL specifically found that the rule would support consumer choice "by extending fiduciary status to more advice and providing flexible and protective [exemptions] that apply to a broad array of compensation arrangements."¹⁰ Indeed, we have already seen industry begin adapting to the rule in various ways. While firms like Merrill Lynch have shifted their business towards flat fee-based retirement accounts, other firms, including Morgan Stanley, Edward Jones, LPL Financial, Wells Fargo, and Raymond James Financial will continue offering commission-based advice on IRA accounts under a fiduciary standard.¹¹

⁷ *Mkt. Synergy Grp., Inc. v. U.S. Dep't of Labor*, 16-CV-4083-DDC-KGS (D. Kan. Feb. 17, 2017) available at https://ecf.ksd.uscourts.gov/cgi-bin/show_public_doc?2016cv4083-71; *Chamber of Commerce v. Hugler*, No. 3:16-cv-1476-M (N.D. Tex. Feb. 8, 2017) available at <http://www.investmentnews.com/assets/docs/CI10892728.PDF>; *Nat'l Ass'n for Fixed Annuities v. Perez*, 16-cv-1035, 2016 WL 6573480 (D.D.C. Nov. 4, 2016) available at https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2016cv1035-46.

⁸ *Mkt. Synergy Grp., Inc. v. U.S. Dep't of Labor*, 16-CV-4083-DDC-KGS at 62, 2016 WL 6948061 (D. Kan. Nov. 28, 2016).

⁹ Presidential Memorandum on Fiduciary Duty Rule for the Secretary of Labor, Re: Fiduciary Duty Rule (Feb. 3, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule>.

¹⁰ Department of Labor, Regulating Advice Markets: Definition of the Term "Fiduciary Conflicts of Interest- Retirement Investment Advice, Regulatory Impact Analysis for Final Rule and Exemptions, at 8, 326 (Apr. 2016), available at <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2/conflict-of-interest-ria.pdf>. The Department also analyzed any potential industry dislocation and disruptions, and ultimately concluded that the final rule avoided "greater than necessary disruption of existing business practices." *Id.* at 328. Similarly, the Department analyzed any impact of the rule on liability and litigation costs, including a potential increase in insurance premium costs for those advisers who chose to limit their financial exposure. *See, e.g., Id.* at 239.

¹¹ Greg Iacurci, *Wells Fargo to keep commission retirement accounts under DOL fiduciary rule*, Investment News, available at <http://www.investmentnews.com/article/20161202/FREE/161209985/wells-fargo-to-keep-commission-retirement-accounts-under-dol>.

March 17, 2017

Most importantly, it would be inappropriate and inconsistent with the law for the DOL to rescind or revise the rule based on the additional analysis and requirements of the memo.¹² The purpose of ERISA is to protect and promote the interests of retirement plan participants and beneficiaries.¹³ While the DOL may reasonably consider the costs and disruptions to financial advisers in crafting the rule, its duty first and foremost is to ensure that the rule sufficiently protects retirees.

For all of the foregoing reasons, we urge the Department to reconsider its proposed delay and protect workers' hard-earned retirement savings by implementing the rule on schedule.

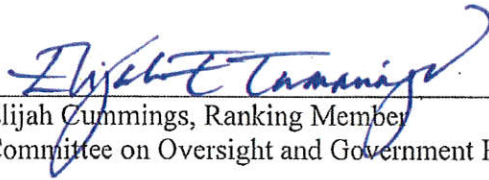
Sincerely,



Maxine Waters, Ranking Member
Committee on Financial Services



Robert "Bobby" Scott, Ranking Member
Committee on Education and the Workforce

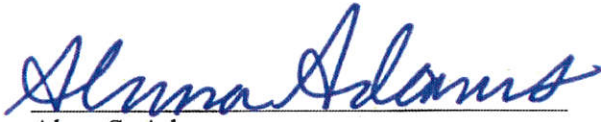


Elijah Cummings, Ranking Member
Committee on Oversight and Government Reform

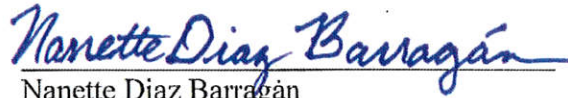
¹² Presidential Memorandum on Fiduciary Duty Rule for the Secretary of Labor, Re: Fiduciary Duty Rule, Sections 1(b), 2(b) (Feb. 3, 2017).

¹³ 29 U.S.C. 1001 (b)(c); *see also* *Boggs v. Boggs*, 520 U.S. 833 (1997) ("The principal object of the statute is to protect plan participants and beneficiaries."); *Chamber of Commerce v. Hugler*, No. 3:16-cv-1476-M (N.D. Tex. Feb. 8, 2017) (upholding the DOL's rule and finding that "[t]he new rules are compatible with the substance of Congress' regulatory scheme, as the broad remedial purpose of [The Employee Retirement Income Security Act of 1974 (ERISA)] is to protect retirement investors and benefit plans).

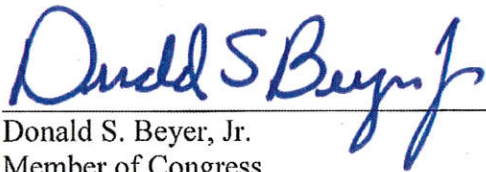
March 17, 2017



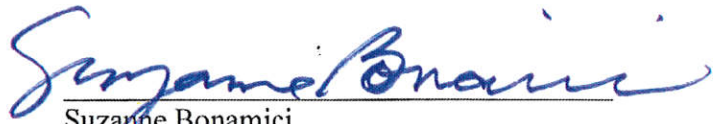
Alma S. Adams
Member of Congress



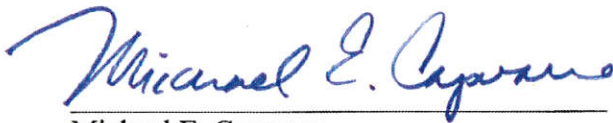
Nanette Diaz Barragan
Member of Congress



Donald S. Beyer, Jr.
Member of Congress



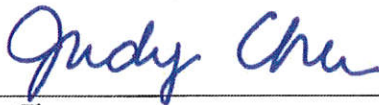
Suzanne Bonamici
Member of Congress



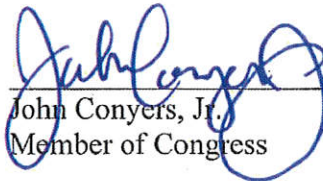
Michael E. Capuano
Member of Congress



Matthew Cartwright
Member of Congress



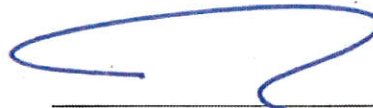
Judy Chu
Member of Congress



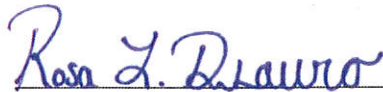
John Conyers, Jr.
Member of Congress



Joe Courtney
Member of Congress



John K. Delaney
Member of Congress



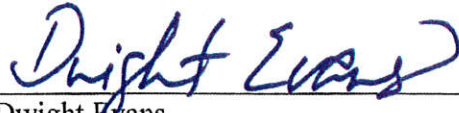
Rosa L. DeLauro
Member of Congress



Mark DeSaulnier
Member of Congress



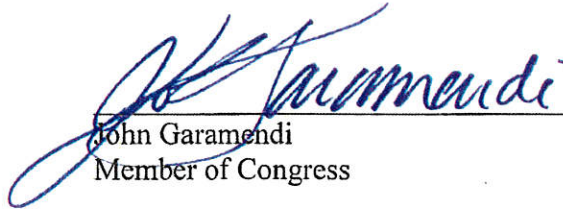
Keith Ellison
Member of Congress



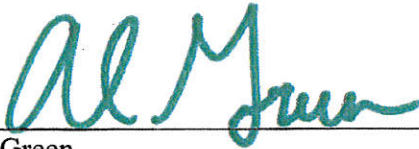
Dwight Evans
Member of Congress



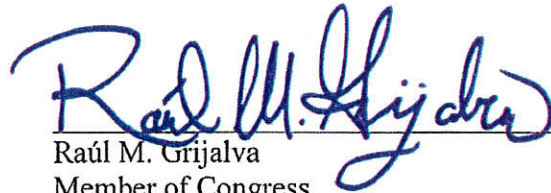
Marcia L. Fudge
Member of Congress



John Garamendi
Member of Congress



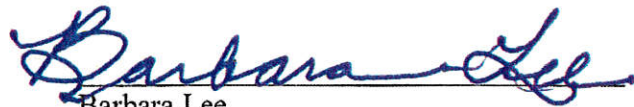
Al Green
Member of Congress



Raúl M. Grijalva
Member of Congress



Eleanor Holmes Norton
Member of Congress



Barbara Lee
Member of Congress



Sheila Jackson Lee
Member of Congress

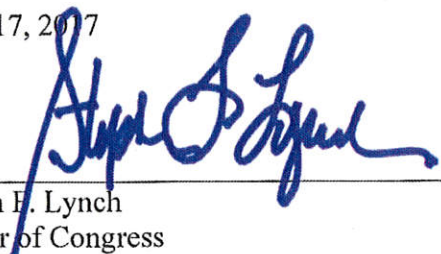


Henry C. "Hank" Johnson, Jr.
Member of Congress

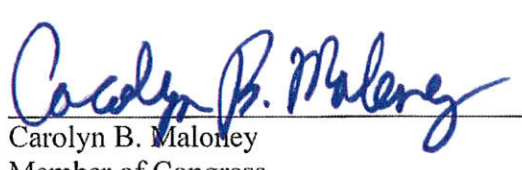


Marcy Kaptur
Member of Congress

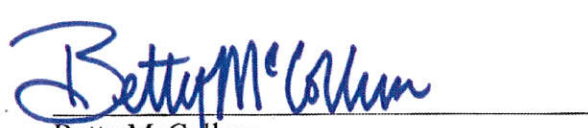
March 17, 2017



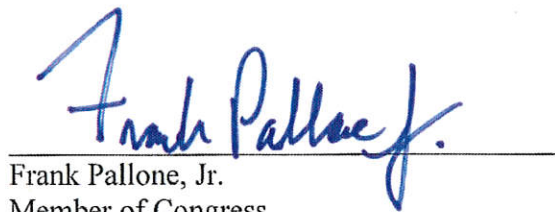
Stephen F. Lynch
Member of Congress



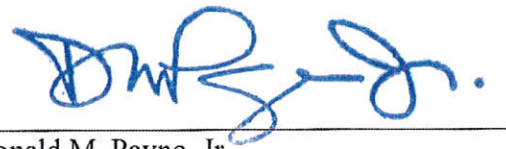
Carolyn B. Maloney
Member of Congress



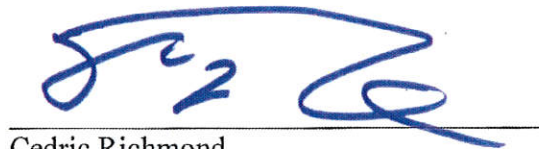
Betty McCollum
Member of Congress



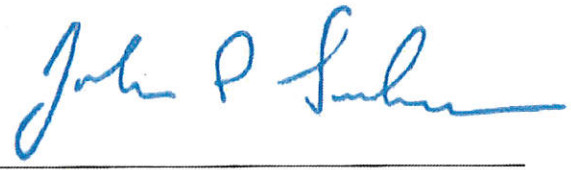
Frank Pallone, Jr.
Member of Congress



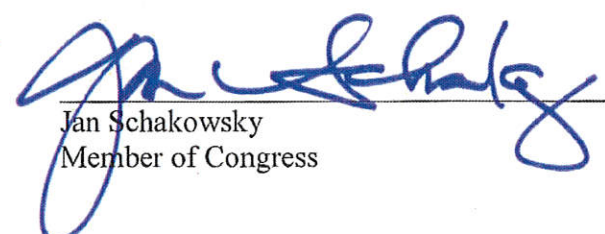
Donald M. Payne, Jr.
Member of Congress



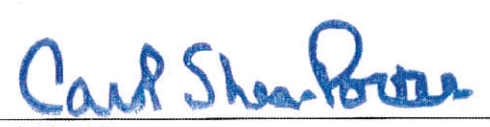
Cedric Richmond
Member of Congress



John P. Sarbanes
Member of Congress



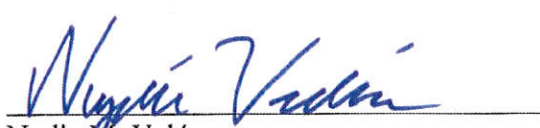
Jan Schakowsky
Member of Congress



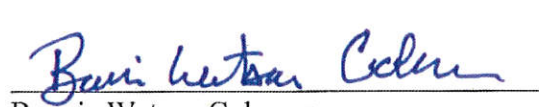
Carol Shea-Porter
Member of Congress



Mark Takano
Member of Congress



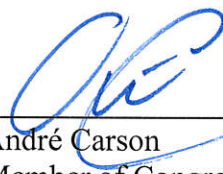
Nydia M. Velázquez
Member of Congress



Bonnie Watson Coleman
Member of Congress



Hakeem S. Jeffries
Member of Congress



André Carson
Member of Congress