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July 20, 2015

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

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

Ladies and Gentlemen:

I am the Chairman of Primerica's African American Leadership Council which is a group of licensed financial representatives devoted to empowering African Americans with the leadership and resources necessary to establish a legacy of financial independence and entrepreneurship for underserved communities. I write to offer our concerns that the Department's proposed Conflict of Interest Rule will disparately impact our members and the middle-income families we serve in the African American community.

As the United States becomes more diverse, it is vital for product providers and policymakers to work with all individuals' best interests in mind when attempting to help them meet their financial challenges. We believe that diversity among financial representatives is the best way for all to "reach their potential and maximize their contributions" to improving the financial lives of Main Street American families.¹

Saving for retirement is among the most important financial priorities for a family.² However, confidence in achieving that priority is highly dependent on whether a family is actually saving towards that goal.³ High student loans, mortgage payments, credit card bills, and utility payments make finding adequate emergency and retirement savings a major challenge. Along with low financial literacy rates, this causes many to spend now and save later.

¹ "Diversity Management: Trends and Practices in the Financial Services Industry and Agencies after the Recent Financial Crisis," GAO Report, Apr. 2013, at 4 & 5.

² 2010 Survey of Consumer Finances, Federal Reserve Board (June 2012).

³ "The 2015 Retirement Confidence Survey: Having a Retirement Savings Plan a Key Factor in Americans' Retirement Confidence," EBRI Issue Brief #413 (April 2015).

The retirement savings challenge is especially acute in the African American communities we serve.⁴ Almost half of African Americans do not have the opportunity to save for retirement at work because their employer does not offer a workplace savings plan.⁵ Those who do have a plan are “less likely to participate in their 401(k) plans, and when they do contribute, they save at lower rates than whites.”⁶ Additionally, research has shown that African Americans are less likely “to invest in and hold high-yielding assets, such as stocks, than the average U.S. family.”⁷ The reality is a savings gap exists in the African American community due to factors outside of income.⁸

In the communities our members serve, basic household financial challenges usually persist unless individuals choose to work with licensed financial representatives like us. Our experience and commitment to these communities demonstrates that African Americans substantially benefit from receiving financial advice. A recent study conducted by consulting firm Oliver Wyman confirms this. Oliver Wyman determined that on average, individuals that use a financial representative have more assets than non-advised individuals across all age and income levels examined.⁹ Moreover, with respect to individuals in or approaching retirement, the differences in assets are even more significant. On average, advised individuals ages 55-64 had 51% more assets than non-advised individuals, and those 65 and older had 113% more assets (i.e. more than double) than the non-advised.¹⁰ These are meaningful differences in assets for middle-income individuals that use financial representatives, which should translate into significant improvements in their retirement living.¹¹ The majority of African Americans believe a financial representative can help.¹² Those who do choose to get help often improve their financial well-being. African Americans who work with a financial representative are “significantly more likely to participate in their employer-sponsored plan (89% v. 78%) and to have a savings account (88% v. 70%), ..., [an] IRA (43% v. 15%), ..., annuities (26% v. 6%), stocks (25% v. 10%) and mutual funds (22% v. 7%).”¹³ In short, African-Americans with a financial representative are almost twice as likely to open an IRA as their peers without one.¹⁴

⁴ Iwry, J. Mark, Written Testimony Before the U.S. Senate Finance Committee, “Social Security & the Retirement Crisis,” (February 26, 2014) (stating, “The risk of an insecure retirement is especially acute for women, minorities, and lower-income Americans.”).

⁵ Rhee, Nari, Ph.D., National Institute on Retirement Security, “Race and Retirement Insecurity in the United States,” (December 2013).

⁶ The Ariel/Hewitt Study, “401(k) Plans in Living Color: A Study of 401(k) Savings Disparities Across Racial and Ethnic Groups (2009) (See also “401(k) Plans in Living Color II, which states, “... there are still significant gaps among those of different racial and ethnic backgrounds, even when comparing groups in similar income and age brackets.”).

⁷ Chiteji, Ngina, and Walker, Lina, The Retirement Security Project, “Strategies to Increase Retirement Savings of African American Households. No. 2008-4.

⁸ Marte, Jonnelle, *The racial wealth gap we hardly talk about: What happens in retirement*, The Washington Post, (February 18, 2015).

⁹ Oliver Wyman: The role of financial advisors in the US retirement market (July 6, 2015). Oliver Wyman states that it “. . . was engaged to perform a rigorous investigation of the role of financial advisors in the US retirement market, and quantify differences in investing behavior and outcomes between advised and non-advised individuals.”

¹⁰ *Id.* at 16

¹¹ *Id.* The study states that their findings hold true even when excluding survey respondents who anticipate receiving retirement income from either an inheritance or trust fund.

¹² “The African American Financial Experience,” Prudential Research, 2013-14.

¹³ *Id.*

¹⁴ *Supra* note 9.

We are concerned that the Department's Proposed Rule will expand the definition of "fiduciary" so broadly that nearly every conversation our members have with potential retirement savers will be construed as fiduciary advice. As such, compensation in connection with the assistance we provide will be subject to reversal and prohibited transaction penalties unless it falls within an exemption. We understand that the Department sought to craft an exemption, designated as the Best Interest Contract Exemption ("BIC Exemption"), that purportedly would allow the continuation of the assistance we provide. Regrettably, the operational complexities and legal uncertainties of the BIC Exemption are so great as to make it unworkable. The Proposed Rule will in effect make it even more difficult for African Americans, many of whom reside in the communities we serve, from receiving affordable individual retirement services.

In particular, the Department's Proposed Rule targets the very popular brokerage-based IRA pursuant to which financial representatives earn a commission for in-person education and assistance. These are exactly the types of services our members provide the individuals we serve. The effect will be that broker-dealers and their financial representatives like us will be compelled to fundamentally restructure their IRA businesses. The result for millions of hard working Americans in the middle-income market will be higher minimum account balances, reduced access to financial professionals, reduced investor choice and ultimately, lost opportunity to accumulate meaningful retirement savings on a tax-deferred basis. The new economic realities will favor higher-cost investment services designed for affluent families over those that help to empower the middle-class.

As a result of the Proposed Rule, African American families will have less opportunity to achieve their retirement goals because the lower cost commission-based services they benefit from today will no longer be available for IRAs. Those with higher net worth may receive assistance through a fee-based adviser, which is the most expensive way to get retirement education and advice. However, 80% of fee-based advisers target individuals with at least \$250,000 in assets.¹⁵ In fact, clients using fee-based advice have on average over \$600,000 in assets.¹⁶ Considering the average minority household net worth is \$183,900¹⁷ fee-based financial advice is often unattainable for many within the communities we serve.

Moreover, many of the families we serve are unwilling or unable to pay hourly fees for one-on-one service. Hourly rates typically range between \$250-500 per hour, "with the total outlay ranging from \$3,000-5,000."¹⁸ Many of our clients start with initial investments of \$250 or less. For example, we open IRAs for as little an investment as \$50 per month. Charging an upfront fee of \$250 per hour would have created an insurmountable barrier for many of our first-time retirement savers whom we helped to take that first critical step to begin saving.

The impact will be particularly devastating for those with less than \$25,000 to invest, which is the lowest required minimum investment for a fee-based advisor we can find. These potential savers

¹⁵ *Financial Planning for the Middle-Class*, Kiplinger, August 2011.

¹⁶ Skinner, Liz, *Investment News, Advisory fees rise above 1% after bottoming in 2013*, (March 30, 2015).

¹⁷ "Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances," Federal Reserve Board (September 2014) (stating that average net worth for non-Hispanic white families is \$705,900).

¹⁸ Light, Larry, *Forbes, How Much Do Advisors Cost*, (July 26, 2012).

will be left without tax-deferred savings options unless they are able to successfully navigate the overwhelming and complex online universe. Unfortunately, middle-class Americans are not comfortable using online technologies to purchase investment products or receive investment advice, and comfort levels appear to decrease with age and be higher for college graduates than for those without a college degree.¹⁹ In short, initiating saving for retirement through an online provider is not something most workers are comfortable doing.²⁰ In fact, minority workers are more likely to use advice from an affordable financial professional rather than using other means like the Internet.²¹ As a result, it is critical that African Americans have affordable access to work one-on-one with a personal financial representative that provides the opportunity to give immediate answers to questions.²² Working with a commission-based representative provides that affordable access for African Americans, while fee-based advisers provide access to only the more affluent.

Our final concern is that the Proposed Rule only applies to IRAs and tax-deferred vehicles but does not apply to taxable accounts. This backs us into an unwanted corner where all we will have to respond to the retirement savings needs of many middle-income investors is taxable accounts instead of tax-deferred retirement accounts. Having one standard for retirement accounts and a different standard for all other accounts will create even more confusion and complexity for individuals than already exists.

It is important to understand that our members carry a legacy within their respective communities. That legacy transcends the transaction of doing business. Our families have often been members of the communities they serve for generations. As one of our members said, "My family had a reputation to uphold, and I always told myself that I never wanted to do business in a manner where I was walking down Main Street, and I saw one of my clients walking toward me that I felt like because I had not done the right thing I would have to cross the road and not face them. I always wanted to maintain a level of trust, a level of respect, and make sure that people look favorably on my business dealings in that city." The Department may believe the Proposed Rule is necessary to ensure financial representatives act in their clients' best interest. We do not have any concerns with working under a best interest standard -- it is something our livelihood already demands we do -- but how it is imposed matters. Unfortunately, we believe the Proposed Rule will work against our clients' best interests by disrupting the services we provide to the communities that we are deeply committed to helping.

We request that the Department be sensitive to minority needs and focus its efforts on policies that help match people to representatives. Some financial firms that provide retirement education and advice have begun bolstering their minority outreach efforts.²³ The Proposed Rule will make it

¹⁹ "The 2012 Retirement Confidence Survey: Job Insecurity, Debt Weigh on Retirement Confidence, Savings," Employee Benefits Research Institute (March 2012).

²⁰ "2007 Minority Retirement Confidence Survey," Fact Sheets 1 and 2: Investment Information and Advice; Expectations About Retirement, Employee Benefits Research Institute (2007); *Supra* note 3, stating "just 4 percent of workers report being very interested in obtaining investment education and advice online..."

²¹ "2007 Minority Retirement Confidence Survey," Fact Sheets 1 and 2: Investment Information and Advice; Expectations About Retirement, Employee Benefits Research Institute (2007).

²² "Advisors Matter," LIMRA (February 2013); *Supra* note 9.

²³ *Blacks, Hispanics Lag in Retirement Savings*, Investment News, July 19, 2009.

even harder for these efforts to succeed by deepening the divide between minority communities and the financial representation they desire. The end result harms our diverse communities the most by reducing access to affordable financial education and advice. The effect will likely be fast growing communities that are even more vulnerable and less prepared for their retirement years.

We urge the Department to withdraw and reconsider the Proposed Rule, as it likely will significantly add to the already difficult challenge that African American communities have of locating personal financial representatives who can help them meet their basic financial and retirement savings needs.

Sincerely

A handwritten signature in black ink, appearing to read 'Ivan Earle', written over a horizontal line.

Ivan Earle
Chairman