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March 17, 2017

**SUBMITTED VIA REGULATIONS.GOV**

Mr. Edward C. Hugler  
Acting Secretary of Labor  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

**Re: Comments Regarding RIN 1210-AB79**

Dear Acting Secretary Hugler:

We write in support of the proposed rule from the Department of Labor (Department) to delay the Obama administration's regulation amending the definition of "fiduciary" under the *Employee Retirement Income Security Act*.<sup>1</sup> The Committee on Education and the Workforce (Committee) of the U.S. House of Representatives has primary jurisdiction over this regulation. Members of the Committee have long believed that financial advisors "should be well trained, committed to high ethical and professional standards, and devoted to the best interests" of those they are serving.<sup>2</sup> Rather than being calculated to further these goals, the Obama administration's extreme and partisan fiduciary regulation was instead "motivated by an insatiable desire to reengineer the retirement services industry and control the mode and manner" by which Americans save for retirement.<sup>3</sup>

<sup>1</sup> Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice; Best Interest Contract Exemption (Prohibited Transaction Exemption 2016–01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016–02); Prohibited Transaction Exemptions 75–1, 77–4, 80–83, 83–1, 84–24 and 86–128, 82 Fed. Reg. 12319 (Mar. 2, 2017) (proposing to extend the applicability date of the fiduciary regulation by 60 days).

<sup>2</sup> *Redefining 'Fiduciary': Assessing the Impact of the Labor Department's Proposal on Workers and Retirees: Hearing Before the Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and the Workforce*, 112th Cong. (Jul. 26, 2011) (statement of the Hon. David P. Roe, Chairman, H. Subcomm. on Health, Employment, Labor, and Pensions).

<sup>3</sup> Letter from the Hon. John Kline, Chairman, H. Comm. on Educ. and the Workforce, *et al* to the Hon. Thomas E. Perez, Sec'y, Dep't of Labor (Jul. 21, 2015), [http://edworkforce.house.gov/uploadedfiles/7-21-15-dol\\_fiduciary\\_rule.pdf](http://edworkforce.house.gov/uploadedfiles/7-21-15-dol_fiduciary_rule.pdf).

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Our concerns regarding the consequences of this regulation are well-documented and have been exhaustively explored in hearings and correspondence.<sup>4</sup> The Committee continues to believe strongly the fiduciary regulation will reduce access to investment options, increase costs for retirement savers and working families, and make it more difficult for small businesses to offer retirement plans.<sup>5</sup> These bipartisan, bicameral concerns culminated in House and Senate passage of a joint resolution of disapproval under the *Congressional Review Act*.<sup>6</sup>

That is why we strongly support President Trump's memorandum of February 3, 2017, which directed the Department to examine the economic and legal implications of the fiduciary regulation.<sup>7</sup> Specifically, the memorandum requires the Department to analyze a series of questions all aimed at determining whether the regulation will "adversely affect the ability of Americans to gain access to retirement information and financial advice."<sup>8</sup> Upon answering these questions, the memorandum directs the Department to rescind or revise the rule, as appropriate.

The Department's proposed 60-day delay is absolutely essential to ensure this analysis—and the subsequent revisions or rescissions—can occur without imposing unnecessary regulatory confusion and burdens. We will also support subsequent further delays to ensure the Department has adequate time to complete a thorough analysis of these vital questions.

Additionally, the Committee continues to support responsible efforts to strengthen protections for retirement savers. That is why, in the 114<sup>th</sup> Congress, the Committee favorably reported the bipartisan *Affordable Retirement Advice Protection Act*.<sup>9</sup> That commonsense legislation required financial advisors to serve their client's best interests and included clear, simple, and relevant disclosure requirements. It also ensured small business owners would continue to receive the assistance they need to provide retirement plans for their employees. This legislation would ensure Americans would have access to the high-quality—but affordable—advice they need to provide for a dignified, secure retirement.

The Committee looks forward to working with the administration to rescind this onerous and harmful regulation and replace it with solutions that strengthen protections and ensure access to

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<sup>4</sup> See H. Rept. 114-527 (2016), <https://www.gpo.gov/fdsys/pkg/CRPT-114hrpt527/pdf/CRPT-114hrpt527-pt1.pdf> (enclosed).

<sup>5</sup> *Id.*; see also 162 Cong. Rec. H2082 (Apr. 28, 2016) (Statement of Chairman Roe) ("Rather than engaging with Members advancing a thoughtful alternative, however, the Department opposed our bipartisan proposal outright. Instead, the Department of Labor rushed a finalized, misguided rule that will hurt the very people they intended to help. Does anyone think that a 1,000-page rule that I hold in my hand here will make it more likely for Americans to save for retirement?").

<sup>6</sup> H.J. Res. 88 (introduced by Chairman Roe) passed the House on April 28, 2016 and passed the Senate on May 24, 2016, but was vetoed on June 8, 2016. The veto was not overridden.

<sup>7</sup> Presidential Memorandum on Fiduciary Duty Rule (Feb. 3, 2017), <https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule>.

<sup>8</sup> *Id.*

<sup>9</sup> H.R. 4293, 114th Cong. (2016); see also Strengthening Access to Valuable Education and Retirement Support Act, H.R. 4294, 114th Cong. (2016) (companion legislation also favorably reported by the Committee).

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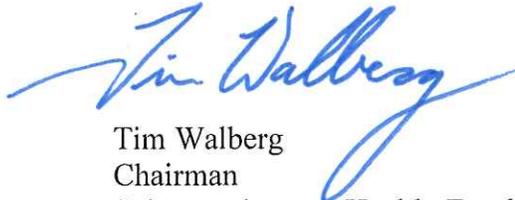
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affordable retirement advice for working families and retirement savers. The first step in that process is finalizing the 60-day delay currently under consideration.

Respectfully,



Virginia Foxx  
Chairwoman  
Committee on Education  
and the Workforce



Tim Walberg  
Chairman  
Subcommittee on Health, Employment,  
Labor, and Pensions



Joe Wilson  
Member of Congress



Duncan Hunter  
Member of Congress



David P. Roe  
Member of Congress



Glenn "GT" Thompson  
Member of Congress



Brett Guthrie  
Member of Congress



Todd Rokita  
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Lou Barletta  
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Luke Messer  
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Dave Brat  
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Glenn Grothman  
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Steve Russell  
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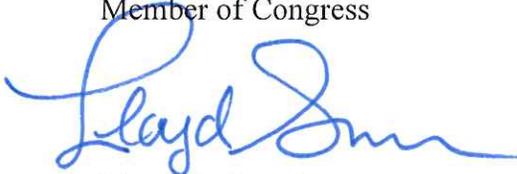
Francis Rooney  
Member of Congress



Paul Mitchell  
Member of Congress



Tom Garrett, Jr.  
Member of Congress



Lloyd K. Smucker  
Member of Congress



A. Drew Ferguson, IV  
Member of Congress

Cc: The Honorable Mick Mulvaney, Director, Office of Management and Budget