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# United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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<http://holycross.org>

April 28, 2017

The Honorable R. Alexander Acosta  
Secretary of Labor  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

Dear Secretary Acosta:

We write to request that you conduct and finalize an exhaustive review of the final fiduciary rule before any part of the rule becomes applicable. We believe that individuals who provide investment advice should act in the best interests of their clients. However, regulatory mandates must not stand in the way of Americans' access to retirement education or services.

The Labor Department published its final fiduciary rule on April 8, 2016, and the rule is set to become applicable on June 9, 2017. While the final rule is more workable in some areas than the initial 2015 proposed rule, we remain concerned that the final rule will hurt working and middle-income savers' access to basic investment education and assistance. For example, the final rule harms Individual Retirement Account (IRA) owners by interfering with owners' access to investment education. The final rule makes illogical distinctions between the same educational services for different types of retirement accounts. These harmful distinctions will result in advisors who want to avoid legal liability being unwilling to provide general education to IRA owners who, as a result, may be less informed as they make crucial decisions on how to best invest their IRA savings for retirement. The final rule also limits assistance for individuals who are leaving employment and considering withdrawing savings from their 401(k) or IRA plans prior to retirement, which ultimately hurts retirement savings.

On February 3, 2017, President Trump wrote a memorandum stating that one of the President's priorities "... is to empower Americans to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses ...".<sup>1</sup> The memorandum directs the Secretary of Labor to examine the fiduciary rule "... to determine whether [the rule] may adversely affect the ability of Americans to gain access to retirement information and financial advice."<sup>2</sup> The memorandum further directs the Secretary to prepare an updated economic and legal analysis regarding the fiduciary rule's impact and determine whether the rule caused or is likely to cause

<sup>1</sup> Fiduciary Duty Rule, Memorandum for the Secretary of Labor, 80 Fed. Reg. 9675 (Feb. 7, 2017).

<sup>2</sup> *Id.*

any one of several harmful conditions. The President's memorandum is clear that if the Secretary makes an affirmative finding as to any of the memorandum's enumerated harmful conditions, "or if [the Secretary] conclude[s] for any other reason after appropriate review that the [fiduciary rule] is inconsistent with the [President's priority]—then [the Secretary] shall publish for notice and comment a proposed rule rescinding or revising the Rule . . .";

Pursuant to the President's memorandum and in light of the numerous concerns with the final fiduciary rule, we respectfully request that you carry out the President's directives without delay and finalize a new fiduciary rule review before any part of the rule becomes applicable.

Thank you for your attention to this critical issue and continued efforts on behalf of Americans saving for retirement. If you have any questions, please have your staff contact Gregory Proseus on Chairman Alexander's staff at (202) 224-6770.

Sincerely,



Lamar Alexander  
Chairman



Michael B. Enzi  
U.S. Senator



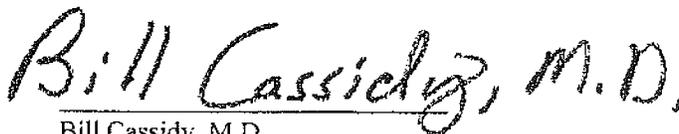
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U.S. Senator



Johnny Isakson  
U.S. Senator



Susan M. Collins  
U.S. Senator



Bill Cassidy, M.D.  
U.S. Senator

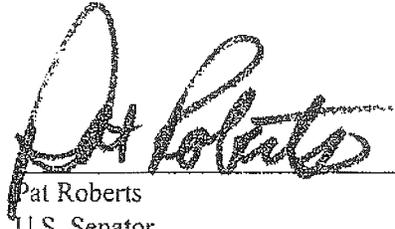
<sup>1</sup> See *id.* ("(i) Whether the anticipated applicability of the Fiduciary Duty Rule has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice; (ii) Whether the anticipated applicability of the Fiduciary Duty Rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees, and (iii) Whether the Fiduciary Duty Rule is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services.")

<sup>2</sup> *Id.* (emphasis added).



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Todd Young  
U.S. Senator



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Pat Roberts  
U.S. Senator



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Tim Scott  
U.S. Senator