

Written Statement for the Record

U.S. Chamber of Commerce

Hearing entitled “Preserving Retirement Security and Investment Choices for All Americans”

Subcommittees on Capital Markets and Government Sponsored Enterprises and Oversight and Investigations

U.S. House of Representatives

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The U.S. Chamber of Commerce is the world’s largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions. The Chamber believes that a coherent, streamlined regulatory structure and effective common sense regulations will ensure the safety and soundness of the financial markets while promoting economic growth and job creation. As the House Financial Services Subcommittees on Capital Markets and Government Sponsored Enterprises and Oversight and Investigations hold a hearing entitled “Preserving Retirement Security and Investment Choices for All Americans,” the Chamber would like to share its views on H.R. 1090, the “Retail Investor Protection Act” (RIPA), and the Department of Labor’s (DOL) repropounded fiduciary rule.

The Chamber strongly supports H.R. 1090 and its enactment into law. RIPA would require the Securities and Exchange Commission (SEC) to study whether it is necessary to establish a uniform standard of care for providing investment advice to retail customers for investment advisors, brokers, and dealers and, if so, to develop a rulemaking. RIPA would also enhance coordination between the SEC and the DOL by prohibiting the DOL from issuing an expanded definition of fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA) until sixty days after the SEC issues a final rule. Without this coordination and comprehensive review, 9 million small businesses may be unable to provide their employees with retirement benefits.

The DOL repropounded a rule modifying the definition of fiduciary investment advice in April 2015 and, since then, thousands of comment letters and many witnesses at the DOL’s public hearing have noted the unworkability of the proposal, its harmful impact on retirement savings, and the clear lack of coordination with the SEC. Consequently, the Chamber believes that proper sequencing of standard of conduct rulemakings by the SEC and DOL, and the associated due diligence of

whether the rules are necessary by marketplace regulatory experts, is critical to ensuring that there is continued access to retirement advice and investment products for employees of small businesses, as well as individual retail investors.

Without that coordination and analysis, unnecessary and increasing costs would flow to small businesses, their employees, and retail investors. For example, the DOL's proposed fiduciary rule would lead to increased liability and new private rights of action not provided for under the federal securities laws. Another example is the fact that complying with the extensive disclosure requirements under this proposed rule would actually violate the federal securities laws. The costs associated with these changes would inevitably be either passed down to small businesses, their employees, and other retail investors or reflected in the inability of financial advisers to no longer serve investors with lower-balance retirement savings due to the prohibitive cost of doing so.

Moreover, as history has shown, the DOL and SEC have often worked at cross-purposes on their fiduciary initiatives, with the DOL failing to adequately consider the current regulatory structure applicable to investment advice. The Financial Industry Regulatory Authority (FINRA), the independent self-regulatory organization responsible for the broker-dealer industry and investor protection and overseen by the SEC, has publicly noted this lack of coordination and the failure of the DOL's proposed rule to build upon the existing regulatory system under the federal securities laws. RIPA would address this issue by requiring the SEC to act first in issuing a standard of care rulemaking and requiring the SEC to consider differences in registration, supervision, and examination requirements applicable to brokers, dealers, and investment advisors before issuing a rulemaking.

The Chamber also supports RIPA's common sense requirements to identify the costs of, or alternatives to, any standard of conduct rulemaking issued by the SEC. RIPA would require the SEC to (1) identify any issues with the current fiduciary structure; (2) consider alternative remedies to reduce confusion or harm to retail investors, including the simplification of titles and enhanced disclosure; and (3) identify whether uniform standards of conduct for broker dealers and investment advisors would have any adverse impact, resulting in reduced products and services for retail investors or a lack of personalized and cost-effective investment advice. These measures would help ensure the appropriate balance in investor protection while mitigating potentially harmful consequences.

More broadly, RIPA is necessary because of the clear lack of consideration the DOL has given to the impact of its proposed fiduciary rule on small businesses and their employees. As detailed more extensively in the Chamber's comment letters to

the DOL, there are three main issues with the proposed fiduciary rule: (1) the “seller’s carve-out” would discriminate against small businesses by excluding small plans, participants, and IRAs; (2) the “best interest contract” exemption would increase the cost of providing services to small businesses and could potentially eliminate access to investment advice completely; and (3) the “education carve-out” would unnecessarily restrict investment assistance and harm small business retirement plan participants. The DOL’s failure to address these issues would cause irreparable harm to the ability of small businesses to provide retirement plans and deny small business employees access to quality retirement advice and products.

The contribution of small business employers to retirement savings in the United States should not be underestimated. The Chamber’s recent report, *Locked Out of Retirement: The Threat to Small Business Retirement Savings*, notes that small business owners provide roughly \$472 billion in retirement savings for over 9 million U.S. households through Simplified Employee Pension (SEP) and Savings Incentive Match Plan for Employees (SIMPLE) type IRA plans.¹ Employees that participate in SEP and SIMPLE IRAs are at particular risk of losing access to retirement advice or products given the sheer compliance burden and litigation risk facing advisors under the proposed rule.

It is also important to realize that, by virtue of their role in America’s economy, small businesses play a critical role in providing retirement plans to Americans. According to the Small Business Administration’s (“SBA”) Office of Advocacy:

- There are more than 28 million small businesses in America.
- Small businesses are 99.7% of all businesses.
- Small businesses employ just under half of all private sector employees, and pay 42% of total U.S. private payroll.
- Small businesses generated 63% of net new jobs between 1993 and mid-2013 and accounted for 60 percent of net new jobs from mid-2009 to mid-2013.

Small business employees are a significant part of the U.S. workforce, many of which rely on financial advisers linked to their employer’s retirement plan for access to investment advice and services that would otherwise not be available. However, the DOL’s proposed fiduciary rule would reduce and in some cases even eliminate those important benefits by requiring advisors to change how their products and services are structured and how the retirement plans and IRA accounts are charged

¹ A copy of our report is included as an appendix to our statement for the record. The report is also available at the following link: https://www.uschamber.com/sites/default/files/us_chamber_-_locked_out_of_retirement.pdf.

fees. Those required changes would result in a dramatic reduction in access to investment advice and services for small business employees. However, there is no clear indication of whether those individuals would have any access to investment advice or retirement savings options at all.

For these reasons, the Chamber strongly supports H.R. 1090, the “Retail Investor Protection Act,” and endorses its swift passage as it would allow the SEC to consider the impact of a uniform standard of conduct on small businesses and their employees. In addition, the attached letter shows over four hundred small businesses, associations, chambers of commerce, and organizations weighing in on the serious impact this rule would have on small businesses and the retirement savings of their employees. The Chamber appreciates the opportunity to submit this statement for the record and would be glad to assist the subcommittees in any way in providing continued support for RIPA and the subcommittees’ oversight of the DOL’s fiduciary duty rule.