

July XX, 2015

United States House of Representatives
United States Senate
Washington, D.C. 205XX

Dear Member of Congress:

The undersigned associations, chambers of commerce, organizations, and small businesses are writing to express our serious concerns regarding the U.S. Department of Labor's ("DOL") proposed rulemaking regarding the Conflict of Interest rule. If finalized in its current form, the proposed rulemaking will disproportionately disadvantage small businesses and stifle retirement savings for millions of employees, by placing additional burdens on America's leading job creators, small businesses. This will substantially reduce retirement savings for many Americans.

On April 20, 2015, the DOL proposed a rulemaking that expands what is considered fiduciary investment advice under the Employee Retirement Income Security Act ("ERISA"), negatively impacting small business retirement plans. Through SEP IRAs and SIMPLE IRAs, small business owners and their employees have accumulated approximately \$472 billion of retirement savings covering more than 9 million U.S. households.¹ The DOL proposal threatens the continued success of these plans and the ability of small businesses to provide retirement security at a time when millions of Americans have reached or are approaching retirement age.

First, the proposal makes it harder to provide retirement plans to small businesses. The broadened definition of investment advice includes "sales" communications, certain educational materials and other situations where no intention to provide individualized fiduciary advice has been expected. However, the proposal carves out large plan advisors from this definition. If a plan has 100 or more participants, or \$100 million or more in plan assets, the advisor to that large plan does not have to be a fiduciary, while an advisor to a small plan does. ***Because an advisor to a small plan is not carved out of the rule, the advisor who is trying to market retirement saving options to a small plan is considered to be providing investment advice and must determine how to comply with the rule. Advisors to large plans are not burdened with these additional hurdles.*** Due to these

¹ See Investment Company Institute, "How Many Households Own IRAs," based on year-end 2012 data, available at http://www.ici.org/faqs/faq/faqs_iras.

additional burdens, advisors to small plans are likely to incur additional costs, which will be passed on to the plan. Further, some advisors to small plans may be incentivized to no longer offer their services to small plans if they determine that the small-scale of such plans means the expense and risk of changing business models and fee structures is not justified.

Second, because advisors to small businesses are not carved out of the investment advice definition, they must either change their fee arrangements or qualify for a special rule called an “exemption” in order to provide services on the same terms as before. ***However, the new exemption proposed by the DOL may not apply to small business plans.*** It does apply to individual owners of IRAs, but it is not clear whether this exemption is available for SEP and SIMPLE IRAs while they are being offered by the employer. ***Even if the new exemption—called the “Best Interest Contract Exemption”—does apply, it would itself substantially increase costs for advisors due to its many conditions and requirements.***

More complex regulations mean more hurdles and compliance costs, and a greater likelihood of lawsuits. Main Street advisors will have to review how they do business, and likely will decrease services, increase costs, or both. Under the proposed rule, small business SEP IRA and SIMPLE IRA arrangements will become more expensive to serve, meaning that small businesses will ultimately lose access to their advisors and disproportionately bear the costs of excessive regulation. ***Consequently, the DOL’s proposed regulations risk hurting the very small businesses and workers they are intended to protect.***

Sincerely,

cc: The Honorable Thomas Perez, Secretary of Labor
Mr. Jeff Zients, Director, National Economic Council