Congress of the United States
Washington, DC 20515

October 6, 2015

The Honorable Thomas Perez, Secretary
United States Department of Labor
200 Constitution Avenue, NW Room S-2018
Washington, DC 20210

Dear Secretary Perez:

We write to comment on the Department of Labor's (DOL) proposed regulation to expand the definition of fiduciary investment advice under the Employee Retirement Income Security Act (ERISA) of 1974. As proposed, the rule will significantly impact workers who save in qualified plans and Individual Retirement Arrangements (IRAs) due to the application of prohibited transaction rules.

When providing personalized investment advice, there is broad agreement among policy makers, consumer groups and industry that financial advisers and institutions should act in the best interest of their customers. The manner in which a "best interest" standard is implemented, however, matters greatly. Prohibited transaction rules have the potential to significantly disrupt and limit what has been routine access to financial guidance and investment advice.

Specifically, we are concerned that the mechanics and complexity of the proposed rule will have widespread negative implication for Americans seeking a secure retirement by restricting access to affordable financial guidance and product choice. Similar concerns have been raised by both Democrats and Republicans and in thousands of comments submitted to DOL. Therefore, we *urge* you to revise the rule to address these broad bipartisan concerns for American families seeking to save for retirement.

Any regulation to expand the definition of investment advice should enhance retirement security by increasing access to retirement savings and improving income security during retirement while also preserving investor choice and improving access to financial guidance and education. As currently drafted, the proposed rule will not meet these important goals for the following reasons.

- **Preserving Investor Choice**. You have indicated on numerous occasions that the proposal does not ban different business models because it includes a "best interest contract" exemption from the rules that would otherwise require such a ban. However, a majority of commenters have indicated that the requirements of the best interest contract exemption are extremely onerous and would be very difficult–if not impossible–to meet. As a result, the current proposal will effectively ban certain business models even if the advice provided is in the customer's best interest. The proposed rule should not favor certain business models over others and should not force all investors into a one-size-fits-all approach that may not be in the best interest of every investor. Retirement savers will be best served if they can choose the model that best meets their specific needs and retirement goals. We, therefore, urge you to develop a simple and practical exemption that will meet your stated goal of preserving different business models for retirement savers.

- **Preserving Access to All Investment Services and Products**. Under the proposed rule, it will be difficult to provide certain types of services and products to all retirement savers and investors. For example, despite the Administration's support for increasing access to guaranteed lifetime income in retirement, the proposed regulation would significantly impair the ability of many financial advisers and firms to offer annuity products in qualified plans and IRAs. It will likely drive many to stop offering these valuable products entirely. In fact, the proposal does not adequately analyze the impact on the variable annuity market or the impact on retirees who could potentially lose guaranteed retirement income protection. Restricting services and products is unnecessary if the financial adviser is legally bound to act in the investor's best interest. The proposal should be revised to provide a clear, workable path to continue making guaranteed lifetime income products available to retirement savers. In addition, the Department must fully evaluate the impact on guaranteed lifetime income and engage in more meaningful consultation with the regulatory agencies that oversee annuities.

- **Preserving Financial Assistance for Small Businesses**. The proposed best interest contract exemption excludes advice provided to small businesses with participant-directed plans, which comprise the vast majority of all small business plans. As a result, many financial advisers and firms will be prohibited from helping small businesses set up retirement plans for their workers. Limiting assistance provided to small business plans is exactly the wrong direction for retirement policy. We should be making it easier–not harder–for small businesses to provide retirement benefits to their workers. Therefore, the best interest contract exemption should cover advice provided to all small business plans.

- **Preserving Access to Financial Education**. Existing regulatory guidance helps draw a line between financial education and fiduciary investment advice. Under this guidance, financial advisers and firms can provide examples of specific investment funds that meet different asset classes. This information is extremely useful to retirement savers who are trying to improve their asset allocation. The proposed rule narrows the existing definition of financial education and will make it harder to provide general information to retirement savers. We urge you to preserve the existing regulatory guidance.

- **Preserving Sales and Marketing Activity**. The current proposal treats sales as fiduciary investment advice even when it is made plain that the adviser is selling a product or service rather than providing investment advice. The proposal should make clear that sales activity is not investment advice. Financial professionals should be allowed to market their services and solicit customers, just as other fiduciaries are allowed to do.

Again, we support the creation of a best interest standard for investment advice. However, we have serious reservations that the details of the current proposal will severely disrupt the availability of affordable financial education and investment advice while also restricting product choice and retirement security for many American families.

We hope you will make substantial changes to address the shortcomings of the proposed rule to reflect these concerns so that any final rule enhances retirement security. Given the scope of the necessary changes and the significant consequences for retirement savers–especially those with smaller account balances–we strongly urge you to provide stakeholders with an opportunity to review the changes before the rule advances and is submitted to the Office of Management and Budget.

Thank you for your timely attention to this matter. Given the gravity of this situation, we respectfully request a written response from you within 15 days.

Sincerely,

Mike Kelly
Member of Congress

Sam Johnson
Member of Congress

Andy Barr
Member of Congress

Joe Barton
Member of Congress

Diane Black
Member of Congress

Charles W. Boustany Jr.
Member of Congress

Kevin Brady
Member of Congress

Dave Brat
Member of Congress

Jim Bridenstine
Member of Congress

Larry Bucshon, MD
Member of Congress

Michael C. Burgess, MD
Member of Congress

Bradley Byrne
Member of Congress

Earl L. "Buddy" Carter
Member of Congress

John R. Carter
Member of Congress

Steve Chabot
Member of Congress

Jason Chaffetz
Member of Congress

Mike Coffman
Member of Congress

Chris Collins
Member of Congress

Doug Collins
Member of Congress

Barbara Comstock
Member of Congress

Todd Rokita
Member of Congress

Edward R. Royce
Member of Congress

F. James F. Sensenbrenner Jr.
Member of Congress

Bill Shuster
Member of Congress

Jason Smith
Member of Congress

Elise M. Stefanik
Member of Congress

Dennis A. Ross
Member of Congress

Austin Scott
Member of Congress

Pete Sessions
Member of Congress

Adrian Smith
Member of Congress

Lamar Smith
Member of Congress

Chris Stewart
Member of Congress

Kevin Cramer
Member of Congress

Ander Crenshaw
Member of Congress

Carlos Curbelo
Member of Congress

Jeff Denham
Member of Congress

Robert J. Dold
Member of Congress

Sean P. Duffy
Member of Congress

Jeff Duncan
Member of Congress

Renee L. Ellmers
Member of Congress

Blake Farenthold
Member of Congress

Stephen Lee Fincher
Member of Congress

Charles "Chuck" J. Fleischmann
Member of Congress

Paul A. Gosar, D.D.S.
Member of Congress

Kay Granger
Member of Congress

H. Morgan Griffith
Member of Congress

Glenn Grothman
Member of Congress

Frank C. Guinta
Member of Congress

Richard L. Hanna
Member of Congress

Cresent Hardy
Member of Congress

Gregg Harper
Member of Congress

Jody B. Hice
Member of Congress

French J. Hill
Member of Congress

George Holding
Member of Congress

Bill Huizenga
Member of Congress

Randy Hultgren
Member of Congress

Duncan Hunter
Member of Congress

Robert Hurt
Member of Congress

Jim Jordan
Member of Congress

David P. Joyce
Member of Congress

Adam Kinzinger
Member of Congress

Leonard Lance
Member of Congress

Robert E. Latta
Member of Congress

Billy Long
Member of Congress

Mia B. Love
Member of Congress

Frank D. Lucas
Member of Congress

Blane Luetkemeyer
Member of Congress

Thomas MacArthur
Member of Congress

Kenny Marchant
Member of Congress

Thomas Massie
Member of Congress

Michael T. McCaul
Member of Congress

Patrick T. McHenry
Member of Congress

Cathy McMorris Rodgers
Member of Congress

Patrick Meehan
Member of Congress

Luke Messer
Member of Congress

John L. Mica
Member of Congress

Jeff Miller
Member of Congress

Mick Mulvaney
Member of Congress

Kristi L. Noem
Member of Congress

Devin Nunes
Member of Congress

Stevan Pearce
Member of Congress

Scott Perry
Member of Congress

Robert Pittenger
Member of Congress

Bruce Poliquin
Member of Congress

Mike Pompeo
Member of Congress

Bill Posey
Member of Congress

John Ratcliffe
Member of Congress

Tom Reed
Member of Congress

David G. Reichert
Member of Congress

James B. Renacci
Member of Congress

Reid J. Ribble
Member of Congress

Martha Roby
Member of Congress

Steve Stivers
Member of Congress

Marlin A. Stutzman
Member of Congress

Glenn "GT" Thompson
Member of Congress

Mac Thornberry
Member of Congress

Patrick J. Tiberi
Member of Congress

Jackie Walorski
Member of Congress

Mimi Walters
Member of Congress

Brad R. Wenstrup
Member of Congress

Roger Williams
Member of Congress

Joe Wilson
Member of Congress

Rob Woodall
Member of Congress

Todd C. Young
Member of Congress

Ryan K. Zinke
Member of Congress