

TO THE MEMBER OF THE UNITED STATES CONGRESS:

The undersigned associations, chambers of commerce, organizations, and small businesses are writing to express our deep concerns regarding the U.S. Department of Labor's final rule on the Definition of a Fiduciary. This rule disproportionately disadvantages small businesses and those businesses with assets of less than \$50 million, 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, and therefore we call upon you to take legislative action.

On April 6, 2016, the DOL issued a final rulemaking that expands what is considered fiduciary investment advice under the Employee Retirement Income Security Act ("ERISA"), negatively impacting small business retirement plans and savers with less than \$50 million in assets. 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 final rule 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. Ultimately, it may even encourage additional saving losses for those who will not be able to access meaningful investment assistance.

First, the final rule makes it harder to provide retirement plans to small businesses or any business that has less than \$50 million in assets ("small plans"). The broadened definition of investment advice includes routine communications where no intention to provide individualized fiduciary advice has been expected, such as "sales" communications and certain educational materials. However, despite this broad definition, the proposal carves out large plan advisors from this definition. If a fiduciary has \$50 million or more in assets, the advisor to that large plan is exempt from being a fiduciary, while an advisor to a fiduciary with less than \$50 million in assets, which primarily constitutes small businesses, is not.

Because an advisor to plans with less than \$50 million are not carved out of the rule, the advisor who is trying to market retirement savings option to a small plan is considered to be providing investment advice and must determine how to comply with the rule. Due to these 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, advisors to small plans must either change their fee arrangement or qualify for a special rule called an "exemption" in order to provide services on the same terms as before. The new exemption called the "Best Interest Contract" incorporates many new challenging conditions and requirements that would substantially increase costs for advisors that may ultimately get passed down to small plans or small business employees.

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

Finally, the final rule limits investment education to IRA owners, including small business employees participating in a SEP IRA or SIMPLE IRA plan. While advisors are permitted to provide model asset allocations appropriate for IRA owners, they are not permitted to help identify specific funds or investment options that correlate to the model asset allocations. This restriction will make it more challenging for small business employees, and may ultimately deter them from saving for retirement altogether.

More complex regulations mean more hurdles and compliance costs and a greater likelihood of litigation. Main Street advisors will have to review how they do business and likely will decrease services, increase costs, or both. Under the final rule, small business SEP IRA and SIMPLE IRA arrangement 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 fiduciary rule ultimately harms the very small businesses and workers they are intended to protect. We strongly urge the Congress to take action to help preserve retirement savings for Americans.