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July 20, 2015

U.S. Department of Labor  
Office of Regulations and Interpretations  
Employee Benefits Security Administration  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice (RIN 1210-AB32)

Ladies and Gentlemen:

We are the Chairman and Co-Chairman of Primerica's Hispanic American Leadership Council which is a group of licensed financial representatives devoted to expanding financial services and entrepreneurial opportunities to Hispanic markets across the nation. We write to offer our concerns that the Department's proposed Conflict of Interest Rule will disparately impact our members and the middle-income families we serve in the Hispanic American community.

As the United States becomes more diverse, it is vital for product providers and policymakers to work with all individuals' best interests in mind when attempting to help them meet their financial challenges. We believe that diversity among financial representatives is the best way for all to "reach their potential and maximize their contributions" to improving the financial lives of Main Street American families.<sup>1</sup>

Saving for retirement is among the most important financial priorities for a family.<sup>2</sup> However, confidence in achieving that priority is highly dependent on whether a family is actually saving towards that goal.<sup>3</sup> High student loans, mortgage payments, credit card bills, and utility payments make finding adequate emergency and retirement savings a major challenge. Along with low financial literacy rates, this causes many to spend now and save later.

The communities our members serve are the most likely to be overwhelmed by saving for retirement.<sup>4</sup> Sixty-two percent of Hispanic Americans do not have the opportunity to save for

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<sup>1</sup> "Diversity Management: Trends and Practices in the Financial Services Industry and Agencies after the Recent Financial Crisis," GAO Report, Apr. 2013, at 4 & 5.

<sup>2</sup> 2010 Survey of Consumer Finances, Federal Reserve Board (June 2012).

<sup>3</sup> "The 2015 Retirement Confidence Survey: Having a Retirement Savings Plan a Key Factor in Americans' Retirement Confidence," EBRI Issue Brief #413 (April 2015).

<sup>4</sup> Culture Complex: Examining the retirement and financial habits, attitudes and preparedness of America's diverse workforce, Insights from ING's "Retirement Revealed" Study (2012); Iwry, J. Mark, Written Testimony Before the U.S. Senate Finance Committee, "Social Security & the Retirement Crisis," (February 26, 2014) (stating, "The risk of an insecure retirement is especially acute for women, minorities, and lower-income Americans.").

retirement at work because their employer does not offer a workplace savings plan.<sup>5</sup> Those who do have a plan are “less likely to participate in their 401(k) plans, and when they do contribute, they save at lower rates than whites.”<sup>6</sup> Additionally, language barriers and lack of Spanish-speaking financial representatives contribute to the retirement challenges Hispanic Americans confront.<sup>7</sup> The reality is a savings gap exists in the Hispanic American community due to factors outside of income.<sup>8</sup>

In the communities our members serve, basic household financial challenges usually persist unless individuals choose to work with licensed financial representatives like us. Our experience and commitment to these communities demonstrates that Hispanic Americans substantially benefit from receiving financial advice. A recent study conducted by consulting firm Oliver Wyman confirms this. Oliver Wyman determined that on average, individuals that use a financial representative have more assets than non-advised individuals across all age and income levels examined.<sup>9</sup> Moreover, with respect to individuals in or approaching retirement, the differences in assets are even more significant. On average, advised individuals ages 55-64 had 51% more assets than non-advised individuals, and those 65 and older had 113% more assets (i.e. more than double) than the non-advised.<sup>10</sup> These are meaningful differences in assets for middle-income individuals that use financial representatives, which should translate into significant improvements in their retirement living.<sup>11</sup> Unfortunately, Hispanic Americans are much less likely to be working with a financial representative and even less likely to have been contacted by one.<sup>12</sup> However, they are often “looking for a financial advisor who understands their needs and goals and explains investment options clearly....”<sup>13</sup> Those who do choose to get help often improve their financial well-being.

We are concerned that the Department’s Proposed Rule will expand the definition of “fiduciary” so broadly that nearly every conversation our members have with potential retirement savers will be construed as fiduciary advice. As such, compensation in connection with the assistance we provide will be subject to reversal and prohibited transaction penalties unless it falls within an exemption. We understand that the Department sought to craft an exemption, designated as the Best Interest Contract Exemption (“BIC Exemption”), that purportedly would allow the

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<sup>5</sup> Rhee, Nari, Ph.D., National Institute on Retirement Security, “Race and Retirement Insecurity in the United States,” (December 2013).

<sup>6</sup> The Ariel/Hewitt Study, “401(k) Plans in Living Color: A Study of 401(k) Savings Disparities Across Racial and Ethnic Groups (2009) (See also “401(k) Plans in Living Color II, which states, “... there are still significant gaps among those of different racial and ethnic backgrounds, even when comparing groups in similar income and age brackets.”).

<sup>7</sup> Chiteji, Ngina, and Walker, Lina, The Retirement Security Project, “Strategies to Increase Retirement Savings of African American Households. No. 2008-4.

<sup>8</sup> Marte, Jonnelle, *The racial wealth gap we hardly talk about: What happens in retirement*, The Washington Post, (February 18, 2015).

<sup>9</sup> Oliver Wyman: The role of financial advisors in the US retirement market (July 6, 2015). Oliver Wyman states that it “. . . was engaged to perform a rigorous investigation of the role of financial advisors in the US retirement market, and quantify differences in investing behavior and outcomes between advised and non-advised individuals.”

<sup>10</sup> *Id.* at 16

<sup>11</sup> *Id.* The study states that their findings hold true even when excluding survey respondents who anticipate receiving retirement income from either an inheritance or trust fund.

<sup>12</sup> “The Hispanic American Financial Experience,” 2014 Prudential Research.

<sup>13</sup> *Id.*

continuation of the assistance we provide. Regrettably, the operational complexities and legal uncertainties of the BIC Exemption are so great as to make it unworkable. The Proposed Rule will in effect make it even more difficult for Hispanic Americans, many of whom reside in the communities we serve, from receiving affordable individual retirement services.

In particular, the Department's Proposed Rule targets the very popular brokerage-based IRA pursuant to which financial representatives earn a commission for in-person education and assistance. These are exactly the types of services our members provide the individuals we serve. The effect will be that broker-dealers and their financial representatives like us will be compelled to fundamentally restructure their IRA businesses. The result for millions of hard working Americans in the middle-income market will be higher minimum account balances, reduced access to financial professionals, reduced investor choice and ultimately, lost opportunity to accumulate meaningful retirement savings on a tax-deferred basis. The new economic realities will favor higher-cost investment services designed for affluent families over those that help to empower the middle-class.

As a result of the Proposed Rule, Hispanic families will have less opportunity to achieve their retirement goals because the lower cost commission-based services they benefit from today will no longer be available for IRAs. Those with higher net worth may receive assistance through a fee-based adviser, which is the most expensive way to get retirement education and advice. However, 80% of fee-based advisers target individuals with at least \$250,000 in assets.<sup>14</sup> In fact, clients using fee-based advice have on average over \$600,000 in assets.<sup>15</sup> Considering the average minority household net worth is \$183,900<sup>16</sup> fee-based financial advice is often unattainable for many within the communities we serve.

Moreover, many of the families we serve are unwilling or unable to pay hourly fees for one-on-one service. Hourly rates typically range between \$250-500 per hour, "with the total outlay ranging from \$3,000-5,000."<sup>17</sup> Many of our clients start with initial investments of \$250 or less. For example, we open IRAs for as little an investment as \$50 per month. Charging an upfront fee of \$250 per hour would have created an insurmountable barrier for many of our first-time retirement savers whom we helped to take that first critical step to begin saving.

The impact will be particularly devastating for those with less than \$25,000 to invest, which is the lowest required minimum investment for a fee-based advisor we can find. These potential savers will be left without tax-deferred savings options unless they are able to successfully navigate the overwhelming and complex online universe. Unfortunately, middle-class Americans are not comfortable using online technologies to purchase investment products or receive investment advice, and comfort levels appear to decrease with age and be higher for college graduates than for those without a college degree.<sup>18</sup> In short, initiating saving for retirement through an online

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<sup>14</sup> *Financial Planning for the Middle-Class*, Kiplinger, August 2011.

<sup>15</sup> Skinner, Liz, Investment News, *Advisory fees rise above 1% after bottoming in 2013*, (March 30, 2015).

<sup>16</sup> "Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances," Federal Reserve Board (September 2014) (stating that average net worth for non-Hispanic white families is \$705,900).

<sup>17</sup> Light, Larry, Forbes, *How Much Do Advisors Cost*, (July 26, 2012).

<sup>18</sup> "The 2012 Retirement Confidence Survey: Job Insecurity, Debt Weigh on Retirement Confidence, Savings," Employee Benefits Research Institute (March 2012)

provider is not something most workers are comfortable doing.<sup>19</sup> Spanish-speaking adults are among the least likely to use the internet.<sup>20</sup> Only 4% of IRAs are opened or maintained by online-only providers.<sup>21</sup> In fact, minority workers are more likely to use advice from an affordable financial professional rather than using other means like the Internet.<sup>22</sup> As a result, it is critical that Hispanic Americans have affordable access to work one-on-one with a personal financial representative that provides the opportunity to give immediate answers to questions.<sup>23</sup> Working with a commission-based representative provides that affordable access for Hispanic Americans, while fee-based advisers provide access to only the more affluent.

Our final concern is that the Proposed Rule only applies to IRAs and tax-deferred vehicles but does not apply to taxable accounts. This backs us into an unwanted corner where all we will have to respond to the retirement savings needs of many middle-income investors is taxable accounts instead of tax-deferred retirement accounts. Having one standard for retirement accounts and a different standard for all other accounts will create even more confusion and complexity for individuals than already exists.

The Department may believe the Proposed Rule is necessary to ensure financial representatives act in their clients' best interest. We do not have any concerns with working under a best interest standard but how it is imposed matters. Unfortunately, we believe the Proposed Rule will work against our client's best interests by disrupting the services we provide to the communities that we are deeply committed to helping. The Hispanic market is a market that requires a lot of education. Part of the education required is to teach many Hispanic Americans that the financial system in America is quite different than in Latino countries. As one of our members said, "Without having the proper knowledge it is a little bit of a mystery but once you can kind of demystify it people are really bright, they can make really good decisions with the proper information." They also added, "When sitting down with our clients we always discuss fees. Fees are only an issue in the absence of value. When you can educate a consumer, and they can actually see the value of the fees, very few people make it an issue." Data show that IRA investors are in fact being educated and making decisions to concentrate their investments in funds that have lower costs on average, not in higher-cost funds.<sup>24</sup> Instead of facilitating education and financial assistance to the Hispanic American community, we fear that the Proposed Rule will impose roadblocks.

We request that the Department be sensitive to minority needs and focus its efforts on policies that help match people to representatives. Some financial firms that provide retirement education and

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<sup>19</sup> "2007 Minority Retirement Confidence Survey," Fact Sheets 1 and 2: Investment Information and Advice; Expectations About Retirement, Employee Benefits Research Institute (2007); *Supra* note 3, stating "just 4 percent of workers report being very interested in obtaining investment education and advice online..."

<sup>20</sup> Zickuhr, Kathryn, and Smith, Aaron, Pew Research Center, "Digital differences," (April 13, 2012).

<sup>21</sup> ICI, "The Role of IRAs in U.S. Households' Savings for Retirement, 2014." (January 2015).

<sup>22</sup> "2007 Minority Retirement Confidence Survey," Fact Sheets 1 and 2: Investment Information and Advice; Expectations About Retirement, Employee Benefits Research Institute (2007).


<sup>23</sup> "Advisors Matter," LIMRA (February 2013); *Supra* note 9.

<sup>24</sup> Oral testimony of Brian Reid, Chief Economist, Investment Company Institute, congressional hearing before the House Education and Workforce Committee Subcommittee on Health, Employment, Labor, and Pensions on "Restricting Access to Financial Advice: Evaluating the Costs and Consequences for Working Families and Retirees" (June 17, 2015).

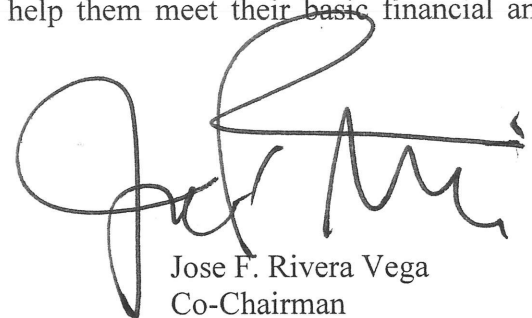
advice have begun bolstering their minority outreach efforts.<sup>25</sup> The Proposed Rule will make it even harder for these efforts to succeed by deepening the divide between minority communities and the financial representation they desire. The end result harms our diverse communities the most by reducing access to affordable financial education and advice. The effect will likely be fast growing communities that are even more vulnerable and less prepared for their retirement years.

We urge the Department to withdraw and reconsider the Proposed Rule, as it likely will significantly add to the already difficult challenge that Hispanic American communities have of locating personal financial representatives who can help them meet their basic financial and retirement savings needs.

Sincerely,



Francisco Dillon  
Chairman



Jose F. Rivera Vega  
Co-Chairman

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<sup>25</sup> Blacks, Hispanics Lag in Retirement Savings, Investment News, (July 19, 2009).