

September 24, 2015

*Via Electronic Submission*  
*(Docket ID number: EBSA-2014-0016)*Office of Regulations and Interpretations,  
Employee Benefits Security Administration  
Attn: Conflict of Interest Rule  
Room N-5655Office of Exemption Determinations  
Employee Benefits Security Administration  
Attn: D-11712 and D-11713U.S. Department of Labor  
200 Constitution Avenue N.W.  
Washington, DC 20210**Re:** Proposed Definition of the Term “Fiduciary” (RIN 1210-AB32);  
Related Proposed Prohibited Transaction Exemptions (ZRIN: 1210-ZA25)

Ladies and Gentlemen:

LPL Financial LLC (LPL)<sup>1</sup> appreciates the opportunity to provide supplemental comments on the Department of Labor’s (Department) Proposed Definition of the Term “Fiduciary”; Conflict of Interest Rule—Retirement Investment Advice and the related proposed prohibited transaction exemptions, and proposed amendments to exemptions. We appreciate the Department’s efforts to consider the many comments and suggestions it has received on the proposed rule, and are encouraged by Assistant Secretary Borzi’s statement during the public hearings that the Department will work to revise the proposed rule so that it is “both protective and reasonable.”<sup>2</sup> We remain committed to working with the Department to achieve this goal.

Our supplemental comments should be considered in conjunction with our prior letter.<sup>3</sup> We hope the Department finds our comments helpful. We remain willing to provide additional comments or clarification upon request.

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<sup>1</sup> As explained in more detail in our first comment letter on the proposed rule, LPL is a leader in the financial advice market and is registered with the SEC as both a broker-dealer and an investment adviser.

<sup>2</sup> Welcoming Remarks of Assistant Secretary Phyllis C. Borzi at the Conflict of Interest Public Hearing (Aug. 10, 2015), available at <http://www.dol.gov/ebsa/regs/1210-AB32-2-HearingWelcomingRemarks.html> (hereinafter “Welcoming Remarks”).

<sup>3</sup> Comment Letter # 641, LPL Financial LLC, David P. Bergers, July 21, 2015.

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### **The Rule Should be Reproposed Before Being Finalized**

The stated goal of the Department’s fiduciary rulemaking is to “create an enforceable best interest standard that requires advisers to put their customer’s best interest first.”<sup>4</sup> Though this goal is simple and laudable in concept, the implication of ERISA’s and the Code’s prohibited transaction rules makes accomplishing this goal, while minimizing harmful disruption, a difficult task. Though we believe the rule has the potential to do a great deal of good by protecting investors, we are concerned that any final rule that is not materially different from the proposed rule may result in significant, unintended, and unnecessary harms—including in the forms of reduced investor choice, market inefficiencies, increased costs, and reduced services.

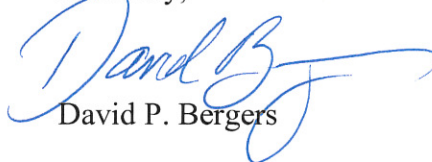
The importance of getting the rule right is underscored by the hundreds of thousands of signatories to petitions and over 2,700 written comments the Department has received on the proposal—many of them lengthy, substantive, and technical. These comments come from members of Congress, securities industry regulators, consumer advocacy groups, industry associations, financial institutions, financial professionals, plan sponsors, and individual investors. The Department also heard over 70 individuals’ testimony during the four days of hearings it held on the rule. Those who testified represented a diverse range of interests and perspectives.

Evaluating and reflecting the comments and testimony of the many parties engaged in this process will undoubtedly require careful balancing and compromise. Given the significant and long-lasting impact the rule is likely to have on retirement services, and that the Department has already signaled that it will make significant changes to the current proposal, we urge the Department to consider issuing a re-proposal prior to issuing a final rule. This will ensure that all stakeholders have the opportunity to review and comment on the changes the Department proposes to make to the rule before it is finalized. At a minimum, we request that the Department issue a discussion draft and conduct focus groups on the rule prior to finalizing it.

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We would welcome the opportunity to further discuss our recommendations with the Department, including any concerns the Department may have with adopting them. We would also be happy to propose language for the Department’s consideration in implementing any of our recommendations.

Sincerely,



David P. Bergers

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<sup>4</sup> Welcoming Remarks.