From: Martin Baily [mailto:mbaily@brookings.edu]
Sent: Friday, July 24, 2015 12:59 PM
To: EBSA, E-ORI - EBSA
Cc: Chelsey Crim
Subject: Conflict of Interest Rule Hearing

To Whom It May Concern:

I, Dr. Martin Neil Baily, Senior Fellow in Economic Studies at the Brookings Institution, representing my own views, would like to formally submit my request to testify before the Department of Labor at the upcoming Conflict of Interest Rule Hearing on the proposed fiduciary rule. Below is a brief outline of the issues I would like to address at the hearing, taken from my written comments on the proposed rule originally submitted on July 21, 2015.

> *Implications for small-scale savers.* The proposed rule will bring with it increased compliance costs. These costs, combined with a reluctance to assume more risk and a fear of litigation, may make some advisors less likely to offer retirement advice to households with modest savings. These households are the ones most in need of direction and education, but because their accounts will not tum profits for advisors, they may be abandoned. According to the Employee Benefits Security Administration (EBSA), the proposed rule will save families with IRAs more than $40 billion over the next decade. However, this benefit must be weighed against the attendant costs of implementing the rule. It is possible that the rule will leave low- and medium-income households without professional guidance, further widening the retirement savings gap. The Department of Labor should consider ways to minimize or manage these costs. Options include incentivizing advisors to continue guiding small-scale savers, perhaps through the tax code, and promoting increased financial literacy training for households with modest savings.
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> *Clarifications about education versus advice.* The proposed rule distinguished education from advisement. An advisor can share general information on best practices in retirement planning, including making age-appropriate asset allocations and determining the ideal age at which to retire, without triggering fiduciary responsibility. This is certainly a useful distinction. However, unsavory advisors could frame this general information in a way that encourages clients to make decisions that are not in their own best interest. I encourage the Department of Labor to think carefully about the line between education and advice, and how to discourage advisors from sharing information in a way that leads to future conflicts of interest. One option may be standardizing the general information that may be provided without triggering fiduciary responsibility.
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> *Implications for risk management.* Earlier I mentioned that under the proposed rule advisors may be reluctant to assume additional risk and worry about litigation. In addition to pushing small-scale savers out of the market, I also worry that the rule may encourage excessive risk aversion in some advisors. General wisdom suggests that young savers should have relatively high-risk portfolios, de-risking as they age, and ending with a relatively low-risk portfolio at the end of the accumulation period. The proposed rule could cause advisors to discourage clients from taking on risk, even when

the risk is generally appropriate and the investor has healthy expectations. Extreme risk aversion could decrease both market returns for investors and the "value-add" of professional advisors. I suggest that the Department of Labor think carefully about how it can discourage conflicted advice without encouraging overzealous risk reductions.

Below please find my contact information.

Martin Neil Baily, PhD
1775 Massachusetts Avenue, NW
Washington, DC 20036
(202) 797-6476
mbaily@brookings.edu
Asstistant: Chelsey M. Crim
ccrim@brookings.edu
(202) 238-3521

I thank you in advance for considering my request to serve as a witness.

Best regards,

Martin Neil Baily
Senior Fellow, The Brookings Institution
Former Chairman, Council of Economic Advisers (1999-2001)