April 17, 2017

Office of Exemption Determinations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Definition of the Term "Fiduciary" – Reconsideration of Rule, RIN 1210-AB79

To Whom It May Concern:

This comment is submitted by the Center for American Progress, or CAP, a progressive, nonpartisan think tank dedicated to improving the lives of Americans through ideas and action. As part of its efforts to reduce poverty and ensure a stable middle class, CAP considers public issues that concern the financial well-being of low- and moderate-income households, and promotes a financial system that works for everyone.

We maintain that the Department of Labor's conflict of interest rule is necessary to correct longstanding market abuses and oppose any further delay in the rule's applicability date or any weakening of the rule. As finalized last year, the rule ensures that the over $181 billion per year[1] in tax expenditures for pensions and retirement savings ultimately flow toward savers and retirees to help support their own retirement. These tax expenditures are intended to benefit retirees rather than financial firms offering high fees and conflicted advice, and their effectiveness relies on workers receiving quality advice that puts them first.

As the Department has acknowledged in its Regulatory Impact Analysis of the rule last year as well as its most recent projection of delayed implementation's costs to investors, it is clear that in the absence of a final rule, investors pay more. Financial adviser compensation across investment options may be twice as large, if not greater, when professionals recommend some products over others.[2] This is clearly conflicted advice, as are the numerous pitches encouraging expensive 401(k) rollovers. Even federal employees are not immune, despite having access to what has been called "the best retirement plan ever" and "a model for others to follow."[3] When they leave the federal workforce, nearly half take money out of the Thrift Savings Plan, or TSP, despite fees that are at least 20 times higher.[4]

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[1] Office of Management and Budget, Analytical Perspectives, Budget of the United States Government, Fiscal Year 2017 (Executive Office of the President, 2016), table 14–1, available at https://obamawhitehouse.archives.gov/sites/default/files/omb/budget/fy2017/assets/ap_14_expenditures.pdf.

[2] Mercer E. Bullard, "Preserving Retirement Security and Investment Choices for All Americans," Testimony before the House of Representatives Committee on Financial Services Subcommittees on Capital Markets and Government Sponsored Enterprises, September 10, 2015, available at http://financialservices.house.gov/uploadedfiles/hhrg-114-ba16-ba09-wstate-mbullard-20150910.pdf.

[3] The Motley Fool, "What Is the Thrift Savings Plan?", available at https://www.fool.com/knowledge-center/what-is-the-thrift-savings-plan.aspx (last accessed April 2017).

[4] John Hechinger, "Brokers Lure Soldiers Out of Low-Fee Federal Retirement Plan," *Bloomberg News*, August 12, 2014, available at http://www.bloomberg.com/news/articles/2014-08-12/brokers-lure-soldiers-out-of-low-fee-federal-retirement-plan.

These conflicts come at a steep price as even seemingly small fee differentials compound over decades. Across a lifetime, a young worker paying an additional 0.75 percent in fees would incur an additional $100,000 of fees, the equivalent of working three additional years.[5] Higher fees are only the beginning: when financial advisers recommend inappropriate investments, retirees may be left with severely compromised savings while firms are able to escape accountability for the consequences.[6]

Even as the Department considers additional delays or substantive changes, the rule has already affected the provision of retirement advice to investors' benefit. By making the cost of financial advice more transparent, investors are better able to recognize the value of the advice they receive and make decisions accordingly. As recently noted in *The Wall Street Journal*, a 75-year-old investor, Thomas Powers, was told that he would need to convert to a fee-based account if he wanted to keep his broker—yet when he threatened to switch firms, his annual fee declined from one percent to 0.3 percent.[7] Meanwhile, a number of firms have developed new ways to serve investors at lower costs without opening the doors to conflicted advice, such as the increasing use of clean shares and T shares.[8] These trends do not suggest an unworkable rule that reduces access, increases costs, or threatens litigation, but rather they reflect the aftereffects of a thorough and successful rulemaking process leading to a fair and competitive market.

While these market trends are important, they will only be sustainable under a legal standard to hold financial professionals accountable to consumers under full implementation of the rule. A clear disconnect continues between the marketing of retirement planning services and the requirements of the advice rendered. The vast majority of retirement investors—87 percent in a 2015 survey—expect that their financial adviser should be legally required to act in the client's best interest.[9] Advertising by firms, meanwhile, claims to confirm these expectations: a recent study of 25 firms affected by the rule finds that they all claim to provide investment advice and retirement planning, even as their trade associations have argued that they are merely engaged in sales.[10] As investor expectations persist and customers increasingly demand advice that is in their best interest, the absence of a final rule that holds financial professionals legally accountable for the advice they give would only lead to future confusion and potential abuse.

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[5] Jennifer Erickson and David Madland, "Fixing the Drain on Retirement Savings: How Retirement Fees Are Straining the Middle Class and What We Can Do about Them" (Washington: Center for American Progress, 2014), available at https://www.americanprogress.org/issues/economy/report/2014/04/11/87503/fixing-the-drain-on-retirement-savings/.

[6] There are a number of examples of conflicted advice leading to disastrous consequences. The case of Elaine and Merlin Toffel is particularly well-known: Tara Siegel Bernard, "Before the Advice, Check Out the Adviser," *The New York Times*, October 10, 2014, available at http://www.nytimes.com/2014/10/12/business/mutfund/before-the-advice-check-out-the-adviser.html.

[7] Michael Wursthorn, "New Retirement Rule Is Delayed, but Not Its Impact," *The Wall Street Journal*, April 8, 2017, available at https://www.wsj.com/articles/new-retirement-rule-is-delayed-but-not-its-impact-1491652800.

[8] John Waggoner, "Expect a spring torrent of new mutual fund share classes," *InvestmentNews*, March 8, 2017, available at http://www.investmentnews.com/article/20170308/FREE/170309920/expect-a-spring-torrent-of-new-mutual-fund-share-classes.

[9] Financial Engines, "The human touch: The role of financial advisors in a changing advice landscape" (2015), available at http://corp.financialengines.com/research/FE-The-Role-of-Financial-Advisors-1015.pdf.

[10] Micah Hauptman and Barbara Roper, "Financial Advisor or Investment Salesperson? Brokers and Insurers Want to Have It Both Ways" (Washington: Consumer Federation of America, 2017), available at http://consumerfed.org/wp-content/uploads/2017/01/1-18-17-Advisor-or-Salesperson_Report.pdf.

The Department of Labor's rule, as finalized last year, addresses concerns in the provision of retirement financial advice that have cost investors and harmed retirement readiness for decades. Its balanced approach is already working to bring higher standards to the industry and greater confidence to investors. Additional steps to further delay or reshape the rule are unnecessary to meet any legitimate financial market or retirement security objective and will only increase costs to consumers and uncertainty for industry. Thank you again for the opportunity to comment. If you would like to discuss anything in this letter in more detail, please contact Joe Valenti, Director of Consumer Finance, at jvalenti@americanprogress.org.

Sincerely,

Joe Valenti
Director of Consumer Finance
Center for American Progress