



African American Leadership Council  
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1 Primerica Parkway  
Duluth, GA 30099-0001

September 6, 2017

*Via Electronic Mail to EBSA.FiduciaryRuleExamination@dol.gov*  
Employee Benefits Security Administration  
Attn: Fiduciary Rule Examination  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

**Re: Request for Information Regarding DOL's Regulation Defining the Term "Fiduciary" and Related Prohibited Transaction Exemptions (RIN 1210-AB82)**

Dear Sir or Madam:

We are the Chairs of Primerica's African-American and Hispanic American Leadership Councils. Our groups comprise licensed financial representatives devoted to empowering individuals and expanding financial services to underserved communities across America. We write to offer our concern that the Fiduciary Rule will disparately impact the middle-income individuals our members serve in addition to limiting savings opportunities for all middle-income Americans in a manner that will make America's retirement savings crisis worse. Specifically, regulations that have the effect of limiting one particular economic segment – small savers – to receiving online robo-advice over one-on-one education and guidance, fails to appropriately respect the diverse needs and challenges all Americans have with saving for their future. We believe that every American deserves the freedom to choose the service that best accommodates their individual circumstances.

We greatly appreciate the opportunity to provide our views on this important topic. The consumer impact highlighted in this comment is an unintentional consequence of the Fiduciary Rule that we believe the Department of Labor ("DOL") has an opportunity to remedy prior to the January 1, 2018 compliance date.

***The Rule's Detrimental Effect on Small Investors***

Since the proposed Fiduciary Rule and its prohibited transactions exemptions ("PTEs", together, the "Rule") were first published in April 2015, many stakeholders have expressed concern regarding the Rule's detrimental effects on small investors attempting to save for retirement.<sup>1</sup> These concerns arise not from the proposed shift to a "fiduciary" standard of care, but from the application of the prohibited transaction rules to individual retirement accounts or IRAs. The Rule makes anyone who gives investment advice to an IRA for a fee a "fiduciary," at which point the PTEs apply. Those rules prohibit the "fiduciary" from providing investment advice that results in higher compensation for himself or herself, and from receiving compensation from a third-party (i.e., a commission). Unfortunately, the

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<sup>1</sup> For example, see, e.g., Richard Foster, Senior Vice President and Senior Counsel for Regulatory and Legal Affairs, Financial Services Roundtable, July 21, 2015 at pgs. 7 – 11; Jason K. Bortz, Michael J. Downer, Capital Group, July 20, 2015, at pgs. 4 – 7; Marcia E. Ascquith, Senior Vice President and Corporate Secretary, FINRA, July 17, 2015, at pgs. 5-6.

purchase of a retail mutual fund in a brokerage IRA, a favorite transaction for small investors saving for retirement, violates both of these prohibitions. Because not all mutual funds offered by broker-dealers generate equal broker compensation, a recommendation to purchase a mutual fund that pays more in selling compensation than another fund results in a prohibited transaction, requiring the firm to comply with the terms of a PTE. Likewise, the selling compensation is paid by the issuing fund company to the selling firm in the form of a commission, which is a payment from a third-party and also prohibited.<sup>2</sup> As of January 1, 2018, when the remaining parts of the rule take effect unless further delayed, the PTE intended to allow brokerage firms to continue to offer mutual funds in brokerage IRA's will be the Best Interest Contract Exemption ("BICE").

Due to the onerous requirements of the BICE, and the penalties and litigation risk that accompany a misstep, many commenters predicted that the costs of complying with the BICE would make serving small accounts on a commission basis unprofitable.<sup>3</sup> This, in turn, would cause many firms to begin shifting these investors to fee-based accounts, where investors are charged an annual fee for advice as opposed to paying transaction-based compensation. Over time, fee-based accounts are more expensive for investors. The SEC periodically reviews switches from brokerage to advisory, and has taken action against firms that switch investors who don't benefit from the additional services offered by fee-based accounts.<sup>4</sup> It was predicted that small investors who could not meet the higher minimums required for a fee-based account would be left on their own, to invest without advice. The implementation of the Rule, therefore, would leave many small investors with a Hobson's choice: either pay the higher fees associated with a fee-based account, if available, or go it alone without advice. Such a result would be untenable, as mutual funds purchased in commission-based brokerage accounts are a cost-effective way for investors, especially small investors, to accumulate retirement savings using a buy and hold strategy.<sup>5</sup> Recent public announcements by brokerage firms in anticipation of the Rule becoming effective, however, have proven these concerns justified.

As of November 2016, which was before the results of the recent Presidential election may have altered firms' plans to comply with the Rule, the industry was well on its way to restricting commission-based business in IRAs.<sup>6</sup> Even as late as early April of 2017, when the 60-day delay in the

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<sup>2</sup> This payment structure is particularly beneficial to small investors as it allows them to pay the sales charge out of the amounts contributed to an IRA, and receive a tax benefit for these costs.

<sup>3</sup> For example, see, e.g., comment letters of ; FINRA, *infra* n. 1 at pg.6 (stating that broker-dealers will abandon small accounts, convert larger accounts to advisory accounts and charge them a higher asset based-fee "largely because of the BICE constraints on differential compensation, the ambiguities in the best interest standard, the lack of clarity concerning various conditions, the costs of compliance, and uncertainty about the consequences of minimal non-compliance.").

<sup>4</sup> See, e.g. Corbin, "SEC takes aim at account selection, share class" (June 23, 2016) online at [www.onwallstreet.com](http://www.onwallstreet.com) (subscription required); Poppick, "SEC fines AIG advisors \$9.5M" (March 15, 2016) (charges included 'reverse churning' which is "overcharging clients who trade infrequently by sticking them in accounts with inclusive wrap fees that cover trading costs and advisory services") online at [www.cnbc.com](http://www.cnbc.com).

<sup>5</sup> Oliver Wyman, "Assessment of the impact of the Department of Labor's proposed "fiduciary" definition rule on IRA consumers" (April 12, 2011), reporting on a study that encompassed 25.3 million IRA accounts, representing approximately 40% of the IRAs in the U.S., where it was found that (i) 98% of the IRAs with \$25,000 or less were in commission-based brokerage relationships (Figure 8), (ii) that switching from commission-based brokerage to an advisory account with any of the 12 firms in the study would cost at least 70% more for accounts of \$50,000 or less (Figure 15), and (iii) that mutual funds were the most popular investment for commission-based accounts of \$50,000 or less (Figure 14).

<sup>6</sup> See e.g., "Merrill Lynch to End Commission-Based Options for Retirement Savers", *WSJ* (October 6, 2016) (retirement savers will no longer have a commission-based account option and must instead use a fee-based account in order to continue receiving investment advice); "JP Morgan Nixes Commissions on Retirement Accounts, Possibly Signaling Fiduciary Rule's Staying Power", *Financial Planning* (November 10, 2016) (commissions to be eliminated on retirement accounts in April 2017; retirement clients will have option of a managed account or self-directed account without advice); "DOL Rule Casualty; Commonwealth Drops Commission Retirement Products", *Think Advisor* (October 24, 2016) (firm to stop offering commission-based products in IRAs and qualified plans); "Stifel's Fiduciary Solution for Commissions", *Financial Planning* (November 3,

implementation of the Rule was announced, firms continued moving investors to fee-based accounts.<sup>7</sup> Going forward, brokerage investors that can meet the higher minimums typically required for fee-based accounts will not lose access to advice, they will just have to pay more for it. But for those small investors that can't meet the higher minimums required for fee-based accounts, the Rule risks stranding many of these investors without access to advice. For these small investors, which one firm estimated to be 7.2 million accounts in a data base representing only 40% of the industry, the Rule presents a grave risk to their retirement futures.<sup>8</sup> Essentially, former Labor Secretary Tom Perez acknowledged this dilemma when he began referring small investors to online "robo" advisers.

### *DOL Touts Technology as Answer for Small Accounts*

Instead of fixing the Rule to allow brokerage firms to continue serving small investors in the way that they overwhelmingly prefer, through commission-based accounts, the DOL began recommending that small savers seek help from online "robo" advisers. As early as June 2015, the prior Administration began promoting the benefits of technology as the solution for small savers.<sup>9</sup> In his prepared testimony before the U. S. House of Representatives, during a hearing into whether the Rule restricted access to financial advice, former DOL Secretary Perez cited technology as the answer for small savers:

"Many of you have raised important questions about how this [Rule] may affect retirement savers with small balances, something we carefully considered while drafting. I simply don't believe the argument that small savers cannot be served by advice that is in their best interest, especially with the advent of new, technology-based and technology-assisted models."<sup>10</sup>

The following month in a Senate hearing focused on the Rule, Secretary Perez specifically touted the online "robo" advisor "Wealthfront" and "firms like this" as the solution for small investors that are left without access to traditional advice.<sup>11</sup> Specifically, Secretary Perez stated as follows:

"A number of folks have raised concerns the proposed rule will shut-out small savers from investment advice. Entities such as the Consumer Federation of America, entities such as AARP, they take a back seat to no one in their concern about small investors and they strongly support this rule. And we've consulted with several profitable firms whose business model is all about working with the little guy, and there was an investment firm out in Palo Alto called Wealthfront. They cite their success as quote - living proof that not only is it possible to provide fiduciary

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2016) (due to requirements of BICE, firm will transition smaller retirement accounts to a fee-based model, while retaining commission accounts for larger clients); "State Farm, Citing DOL Fiduciary Rule, Cuts Agents from Mutual Fund and Variable Annuity Sales", *Investment News* (August 19, 2016) (Agent sales of mutual funds and variable annuities to be replaced by self-directed call center); "Edward Jones Revamps Retirement Offerings for DOL Rule", *Financial Advisor IQ* (August 19, 2016) (Mutual funds and ETFs will no longer be offered in commission-based IRAs, which will generally have a \$100,000 minimum).

<sup>7</sup> See Wursthorn, "Retirement Rule Delayed, but Impact Isn't," *WSJ* (April 10, 2017).

<sup>8</sup> See Oliver Wyman report, *infra.* n. 5, which found that 7.2 million IRAs did not have enough assets to qualify for an advisory account with any firm in the study.

<sup>9</sup> See, e.g., Schoeff, "DOL Secretary Perez touts Wealthfront as paragon of low-cost, fiduciary advice", *Investment News* (June 19, 2015); Picture of Perez and Adam Nash, CEO of Wealthfront, tweeted by Perez at

<https://twitter.com/SecTomPerez/status/611694768515629056>, where Perez states "Great meeting @ Adam Nash, CEO of @Wealthfront, who's building his biz while looking out for client's best interest" (June 18, 2015).

<sup>10</sup> Statement of Thomas E. Perez, Secretary U.S. Department of Labor, before the U.S. House of Representatives, Committee on Education and the Workforce, Health, Employment, Labor and Pensions Subcommittee, on "Restricting Access to Financial Advice: Evaluating the Costs and Consequences for Working Families and Retirees" (June 17, 2015), available by searching [www.edworkforce.house.gov](http://www.edworkforce.house.gov).

<sup>11</sup> Testimony of Thomas E. Perez, Secretary, U.S. Department of Labor, before the United States Senate, Committee on Health, Education, Labor and Pensions, Employment and Workforce Safety Subcommittee, on "Restricting Advice and Education: DOL's Unworkable Investment Proposal for American Families and Retirees" (July 21, 2015).

service at low cost to small investors nationwide but the market greatly rewards this effort. And when I talk to firms like this and tell them about the argument on the other side that our rulemaking will make it impossible to serve the small saver, the most frequent advice I get is – give them my phone number, give them my email, because you know what, I’ll take their business any day of the week. I know that this industry can adapt to serve this eleven trillion dollar market and I’m confident that we can work with them.”<sup>12</sup>

Again, later that year, in October, at a Brookings event titled “How Should Retirement Investment Advice Be Regulated,” Secretary Perez mentioned three online “robo” advisers, and the Garret Planning Network, as providing solutions for small investors, and stated as follows:

“Successful firms like Wealthfront, the Garrett Planning Network, Financial Engines, and Personal Capital are there to occupy this important market niche, and others as well. These firms already do quite profitably, and they do so while embracing and adhering to a fiduciary standard. When I talk to these firms, and I tell them about the argument that we hear, that the proposed rule will make it nearly impossible to serve small savers, what I hear most frequently is the following: Give those small savers my phone number. I can help them grow their assets, and I can help them make a decent living.”<sup>13</sup>

Secretary Perez continued to promote online “robo” advisors as the solution for small investors well into 2016.<sup>14</sup> The totality of these statements shows that the DOL was counting on online “robo” advisers to help those small savers whom the Rule would cut off from traditional advice because they could not afford to make the shift to the more expensive fee-based accounts.

The promotion of automation over human advisers as the answer for small investors seemed ‘out-of-sorts’ for a government agency whose mission is to “advance opportunities for profitable employment.”<sup>15</sup> Indeed, it is surprising given that the automated business model would likely take jobs from people.<sup>16</sup> In retrospect, promoting online “robo” advisers in an effort to save the Rule from withering criticism over its effect on small investors fails to provide these investors with access to the resources and choices they need to save for retirement.<sup>17</sup> In reality, the endorsement of online “robo” advisers for small investors should be recognized for what it is – a tacit admission that the Rule leaves no other option for small savers. Moreover, the endorsement was short-sighted. For at the very same time that the DOL was promoting online “robo” advisers as the answer for small investors, others in the Obama Administration were confronting the “digital divide” that still exists in America, where minority, low-income and rural Americans are beset by lower than average rates of internet access that threaten their economic opportunities and would, of course, leave many of them without access to online advice.

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<sup>12</sup> See video of Secretary Perez’s testimony available at [www.help.senate.gov/hearings/restricting-advice-and-education-dols-unworkable-investment-proposal-for-american-families-and-retirees](http://www.help.senate.gov/hearings/restricting-advice-and-education-dols-unworkable-investment-proposal-for-american-families-and-retirees), at 32:40 to 33:48.

<sup>13</sup> See “How Should Retirement Investment Advice Be Regulated,” The Brookings Institution (October 16, 2015), page 9 of transcript online at [www.brookings.edu/wp-content/uploads/2015/10/20151016\\_retirement\\_investment\\_transcript.pdf](http://www.brookings.edu/wp-content/uploads/2015/10/20151016_retirement_investment_transcript.pdf).

<sup>14</sup> See Secretary Perez interviewed by David Westin of Bloomberg TV, where he stated that “technology is our ally for small savers”, at [www.youtube.com/watch?v=9Ru5Mj6Vu1g](http://www.youtube.com/watch?v=9Ru5Mj6Vu1g) (April 6, 2016); Secretary Perez’s speech to the National Press Club where he touted online adviser Wealthfront as being successful in providing services under a best interest standard, at [www.mprnews.org/story/2016/06/22/mpr\\_news\\_presents](http://www.mprnews.org/story/2016/06/22/mpr_news_presents) (June 22, 2016).

<sup>15</sup> See the DOL’s mission statement at [www.dol.gov/general/aboutdol/mission](http://www.dol.gov/general/aboutdol/mission).

<sup>16</sup> On its website, Wealthfront encourages visitors to “See why software is better than people.” (July 11, 2017) at [www.wealthfront.com](http://www.wealthfront.com).

<sup>17</sup> See, e.g., Litan and Singer, “Good Intentions Gone Wrong: The Yet-To-Be-Recognized Costs of the Department Of Labor’s Proposed Fiduciary Rule” (July 2015) online at <https://ei.com/support-proposed-fiduciary-rule-roposed-fiduciary-rule/>; Oliver Wyman report, *infra* n. 5.

## *Internet Access and The Digital Divide*

In January 2015, former President Obama declared high speed broadband internet access a “necessity” and made increasing broadband adoption a priority for his administration.<sup>18</sup> In support of his agenda, the Council of Economic Advisers (“CEA”) undertook a study of the state of internet access throughout the U.S and released its findings in two “Issue Briefs”, the first released in July 2015, followed by a subsequent March 2016 release. In each report, the CEA performed a detailed analysis of the data available from the most recent American Community Survey (“ACS”), which was amended in 2013 to include a question about household internet access.<sup>19</sup> The CEA found that a persistent “digital divide” still exists in the U.S., where minorities and low-income Americans have below average rates of internet usage. The CEA’s specific findings provide a unique picture into the state of internet access in the U.S.

In the July 2015 report, titled “Mapping the Digital Divide,” the CEA analyzed internet access in the U.S. by looking at household income across geographical areas with varying population densities.<sup>20</sup> They segregated the 2013 ACS data into four household income categories, with more than \$85,000 in yearly household income being the highest, and less than \$56,000 per year in yearly household income being the lowest, and applied these income categories across all population densities utilized.<sup>21</sup> The CEA found that no matter what population density was examined, whether rural or urban areas, those in the highest income category were at least 20 percentage points more likely to have internet access than those in the lowest income category. For example, in the most densely populated areas of the country that have more than 1,520 persons per square mile, the CEA found that 86% of households in the highest income category had access to the internet, compared to only 62% of households in the lowest income category. Likewise, in the most sparsely populated areas of the country with less than 167 people per square mile, typically rural areas, the CEA found that 82% of households in the highest income category had access to the internet, compared to only 61% of households in the lowest income category. The CEA’s analysis indicates that there is a strong correlation between household income and internet access, and that no matter where you went in the U.S. in 2013, there were more than twice as many low-income households that lacked access to the internet, as there were high income households.

Subsequently, in the March 2016 report, titled “The Digital Divide and Economic Benefits of Broadband Access,” the CEA analyzed data from the 2014 ACS, which was released in December 2015.<sup>22</sup> This time, the CEA divided the ACS survey data into five levels of household income, defining the lowest income category as households earning less than \$21,700 per year.<sup>23</sup> As you would expect, reducing the income level for the lowest category dramatically increased the variance in internet access between the lowest and highest income households. The CEA found that only about 49 percent of households with income in the bottom quintile of the household income distribution were using the internet compared to approximately 95 percent of households in the top income quintile. Moreover, the CEA analyzed the 2014 ACS survey data by the race of the head of household and found that African American and

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<sup>18</sup> Council of Economic Advisers Issue Brief, “*Mapping The Digital Divide*” (July 2015) at pg. 1, online at <https://obamawhitehouse.archives.gov/administration/eop/cea/factsheets-reports>.

<sup>19</sup> The pertinent ACS question reads as follows: “At this house, apartment or mobile home – do you or any member of this household access the internet?” Obviously, a “no” answer could mean either that there are no internet services available in the geographical area, or that internet services are available but members of this household choose not to pay for them.

<sup>20</sup> “*Mapping The Digital Divide*”, infra n. 18, at pgs. 3-6.

<sup>21</sup> Id. at pg. 5, Table 2: Internet Use (Percentage) by Income and Population Density. The four yearly household income categories are < \$56k; \$56-67k; \$67-85k; and >\$85k.

<sup>22</sup> Council of Economic Advisers Issue Brief, “*The Digital Divide and Economic Benefits of Broadband Access*” (March 2016) at pgs. 1-6, online at <https://obamawhitehouse.archives.gov/administration/eop/cea/factsheets-reports>.

<sup>23</sup> Id. at pg. 3, Figure 2a: Households Using Internet at Home by Income, 2014.

Hispanic households report lower internet subscription rates compared to national averages. Specifically, the CEA found that while 77.6% of White households had access to the internet, only 68.5% of Hispanic households, and 63.3% of African American households had access.<sup>24</sup>

Though the CEA reports are highly enlightening as to the state of internet access in the U.S. and the continuing existence of the “digital divide”, it must be noted that the CEA did not go further and analyze the quality of internet access, or, in other words, whether that access was broadband access. If, as President Obama declared in January 2015, high speed broadband access has become a “necessity” in today’s economy, then the “digital divide” must be understood in those terms. Clearly, the CEA agreed with President Obama’s position. In its’ March 2016 report, the CEA concluded that “addressing the digital divide is critical to ensuring that all Americans can take advantage of the many well-documented socio-economic benefits afforded by internet connections”, and that these “benefits are most evident when consumers have access to the [I]nternet at speeds fast enough to be considered broadband”, which “speeds are required to facilitate full interaction with advanced online platforms.”<sup>25</sup> The CEA went on to elaborate on the important economic benefits of broadband access. According to the CEA, broadband has “made medical care and medical information more convenient and more accessible,” “enable[d] access to lower-cost online education,” “has become a critical tool that job seekers use to search and apply for jobs,” and “may [have]increase[d] civic participation” by providing easier access to news and political campaign issues.<sup>26</sup> The CEA’s important work made clear that as late as 2014, internet access was not equally distributed throughout the U.S. and the “digital divide” remained a problem.

To understand the availability of broadband access, however, and the recent progress that has been made in this area, we reviewed information made public by the Federal Communication Commission (“FCC”), the federal agency that has regulatory jurisdiction over broadband deployment.

### ***FCC’s Broadband Progress Reports***

The FCC is charged with evaluating the availability of high speed broadband internet access to all Americans on an annual basis.<sup>27</sup> The FCC publishes its reports, known as Broadband Progress Reports, on its website. In its’ recent reports, the Commission has found that high speed broadband was not being deployed to all Americans in a ‘reasonable and timely fashion.’ The Commission based its determinations on the lack of availability of fixed broadband services at the speeds it requires which are 25 Mbps download / 3 Mbps upload (“25 Mbps / 3 Mbps”).<sup>28</sup> Interestingly, up until its 2016 report, the Commission had not included the availability of mobile broadband in its evaluations, as it found the data

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<sup>24</sup> Id. at pg. 2.

<sup>25</sup> Id. at pg. 5

<sup>26</sup> Id. at pgs. 4-6. In addition, the CEA referenced the FCC’s National Broadband Plan (2010), which explained that broadband can support “entrepreneurship and small businesses”, promote “energy efficiency and energy savings”, improve “government performance”, and enhance “public safety.” Id at pg 6.

<sup>27</sup> See FCC, *2016 Broadband Progress Report* (January 29, 2016), online at [www.fcc.gov/reports-research/reports/broadband-progress-reports/2016-broadband-progress-report](http://www.fcc.gov/reports-research/reports/broadband-progress-reports/2016-broadband-progress-report), at pgs. 4-6. (Section 706(b) of the Telecommunications Act of 1996 required the FCC to initiate an inquiry to evaluate the availability of “advanced telecommunications capability” to all Americans. The term “advanced telecommunications capability” was defined to include “high speed . . . broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics and video telecommunications . . .” In conducting its inquiry, the FCC must “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.” If that determination is negative, the Commission “shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.” In 2008, Congress augmented the FCC’s role in ensuring that effective broadband services reach all Americans by passing the Broadband Data Improvement Act (“BDIA”), which requires the FCC to issue its section 706(b) reports annually.)

<sup>28</sup> Id. at pgs. 5-6.

regarding the deployment of those services “may overstate deployment to a significant degree, and because of concerns about the latency and capacity of mobile broadband services.”<sup>29</sup>

In January 2016, the FCC released its 2016 Broadband Progress Report in which it continued its position that high speed broadband is not being deployed to all Americans in a reasonable and timely fashion.”<sup>30</sup> Though the FCC acknowledged the “meaningful progress” that had been made through initiatives to advance deployment of 25 Mbps / 3 Mbps or higher services, the FCC estimated that, as of December 31, 2014, “approximately 34 million” or 10 percent of Americans did not have access to fixed broadband services of the speed it requires.<sup>31</sup> Moreover, the FCC highlighted the disparity in access that exists in rural America, on Tribal lands and in the U.S. Territories.<sup>32</sup>

According to the FCC, more than 39% of Americans living in rural areas lack access to fixed 25 Mbps / 3 Mbps or higher services, as compared to only 4% of Americans living in urban areas. In addition, the FCC found that approximately 41% of Americans living on Tribal lands and 66% of Americans living in the U.S. Territories lack access to fixed 25 Mbps / 3 Mbps or higher services, as compared to only 10% of the U.S. population as a whole.<sup>33</sup> Though the FCC considered the availability of mobile broadband in its analysis, it determined that mobile broadband was not the functional equivalent of fixed broadband, and refused to credit areas that were limited to only mobile broadband. The FCC explained that its findings were based on the broadband deployment and subscription data it receives on Form 477, which is filed by facilities-based providers of broadband connections to end users.

Though the FCC has not yet issued its 2017 Broadband Progress Report, it has made more recent broadband deployment data available on its website in the form of an interactive broadband deployment map, whereby an interested person may click on any location in the U.S. and determine the population in that census block without access to fixed 25 Mbps / 3 Mbps services as of June 30, 2016.<sup>34</sup> In addition, the FCC has established an initiative entitled “Bridging The Digital Divide For All Americans” and produced a webpage that brings together all relevant data on this issue.<sup>35</sup> On this webpage, the FCC summarized its most recent estimates of Americans without access to adequate fixed broadband services as follows:

“High-speed internet access, or broadband, is critical to economic opportunity, job creation, education, and civic engagement. But there are too many parts of this country where broadband is unavailable. In urban areas, 97% of Americans have access to high-speed fixed service. In rural

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<sup>29</sup> Id. at pg. 6, para. 9.

<sup>30</sup> Id. at pg. 2, para. 1.

<sup>31</sup> Id. at pg. 3, para. 4.

<sup>32</sup> U.S. Territories includes American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

<sup>33</sup> Id. at pg. 33-34, para. 79. To elaborate on its point, the FCC produced a chart showing the number of Americans in each State and U.S. Territory that lacked access to fixed 25 Mbps or higher services. See Appendix D: Americans Without Access to Fixed Advanced Telecommunications Capability by State and U.S. Territory. As of December 31, 2014, the ten states with the largest populations of Americans without access to 25 Mbps / 3 Mbps or higher broadband were as follows: Texas (2,976,879), U.S. Territories (2,628,397), California (2,017,166), Florida (1,297,648), Missouri (1,257,622), Illinois (1,188,012), Michigan (1,153,387), Mississippi (1,034,047), Indiana (1,131,373), and Oklahoma (1,066,854). In contrast, the ten states with the largest percentage of their populations without access were the following: U.S. Territories (66%), Mississippi (34%), Montana (31%), West Virginia (30%), Oklahoma (27%), Alaska (26%), Arkansas (25%), Wyoming (23%), Alabama and New Mexico (20%).

<sup>34</sup> Id. at pgs. 31-32, paras. 73-75. The FCC expressed some concern that its analysis may overstate the deployment of services in an area, as providers of fixed broadband services identify, by census block, whether they provide services somewhere within the census block. Accordingly, the FCC’s analysis could indicate that the services are offered to Americans residing within the census block even if services are offered only to a portion of the residents residing in that census block. Id. at pg. 32, fn. 234.

<sup>34</sup> <https://www.fcc.gov/reports-research/maps/fixed-broadband-deployment-data/>

<sup>35</sup> <https://www.fcc.gov/about-fcc/fcc-initiatives/bridging-digital-divide-all-americans>

areas, that number falls to 65%. And on Tribal lands, barely 60% have access. All told, nearly 30 million Americans cannot reap the benefits of the digital age.”<sup>36</sup>

This most recent statement from the FCC indicates that fixed broadband services are not equally deployed throughout the U.S., and that Americans living in rural areas and on Tribal lands are far behind Americans living in urban areas. Clearly, the FCC’s work is important in understanding the current state of the digital divide and the deployment of high speed fixed broadband services. Yet there is still more recent information available, and that also from a well-respected source.

### ***Pew Research Center: Digital Divides – Feeding America***

The Pew Research Center (“Center”), a nonpartisan fact tank, has been a frequent contributor to the body of research on the digital divide.<sup>37</sup> Recently, in February 2017, the Center’s Director of Internet, Science and Technology, Mr. Lee Rainie, presented its most recent research to the board of *Feeding America*, the nation’s largest domestic hunger-relief organization.<sup>38</sup> The Center’s findings were based on its survey of U.S. adults conducted during the period of September 29<sup>th</sup> to November 6<sup>th</sup>, 2016. Importantly, the Center looked at internet access by race and ethnicity, and household income, and found that the disparities that had existed in 2014 had narrowed. According to the Center, as of the Fall of 2016, 90% of Whites and Hispanics used the internet, as did 86% of African Americans. Also, only 81% of households with annual income of \$30k per year or below had access to the internet, compared to all other income groups that had above average (90%) rates of access. Moreover, Rainie’s presentation examined variations in home broadband use based on several demographic measures, including race and ethnicity, household income, age and community type.<sup>39</sup> The Center’s research casts important light on those demographic groups that are less likely to have the necessary broadband connection at home to allow them to make full use of an online “robo” adviser.

The Center’s research found that the benefits of home broadband are not equally distributed by race in America. The Center determined that 73% of all U.S. adults are users of home broadband, which number includes 78% of all White U.S. adults, but only 65% of all African American adults and 58% of all Hispanic adults. Accordingly, the latest research indicates that the DOL’s recommendation of online automated advisers as the solution for delivering investment advice to small investors is much more likely to be beyond the reach of African American and Hispanic adults, rather than Whites. In fact, the Center’s research indicates that there are almost twice as many African American and Hispanic adults in the U.S. who lack home broadband service, as there are Whites.

Recall that the CEA’s work established a strong link between household income and internet access. As you would expect, the Center found a similar link between household income and home broadband use, as there are much higher rates of broadband use in households with higher income. According to the Center, 94% of all U.S. adults with household incomes over \$100k per year, and 83% of all adults with household incomes between \$50k and \$75k per year, are users of home broadband. The rate of usage drops significantly, however, as household incomes fall below these levels. Only 71% of U.S. adults with household incomes between \$30k and \$50k, and 53% of adults with household incomes below \$30k, have broadband in the home. These low rates of broadband usage confirm that the DOL’s

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<sup>36</sup> Id.

<sup>37</sup> See, e.g. Perrin, “*Digital gap between rural and nonrural America persists*” (May 2017), online at [www.pewresearch.org](http://www.pewresearch.org); Anderson, “*Digital divide persists even as lower-income Americans make gains in tech adoption*,” (March 2017); Anderson, “*13% of Americans don’t use the internet. Who are they?*” (September 2016); Perrin and Duggan, “*Americans’ Internet Access: 2000-2015*” (June 2015); Horrigan, “*The numbers behind the broadband ‘homework gap’*,” (April 2015).

<sup>38</sup> [www.feedingamerica.org](http://www.feedingamerica.org)

<sup>39</sup> See Rainie, “*Digital Divides – Feeding America*” (February 9, 2017), at [www.pewinternet.org](http://www.pewinternet.org)/ presentations.



solution for small investors attempting to save for retirement is out of reach of many low-income households, where many small investors, working to get ahead, will reside. Fully, 3 out of every 10 adults with household incomes between \$30k and \$50k, and 5 out of every 10 adults with household incomes below \$30k, won't have the necessary internet connections at home to be able to utilize an automated "robo" adviser that has been promoted by the DOL.<sup>40</sup>

Finally, the Center's work reconfirmed the 'digital divide' between urban and rural populations, and older Americans that tend to be much less computer-savvy. According to the Center's research, 76% of suburban U.S. adults and 73% of urban adults use home broadband, whereas only 63% of rural adults have broadband in the home.<sup>41</sup> This difference is most likely explained by the lack of population density in rural areas, making it less profitable for companies to incur the expense of installing broadband infrastructure. Also, as expected, Americans 65 years of age and older are much less likely to have a broadband internet connection at home. While 81% of U.S. adults ages of 30-49, and 75% of adults ages 50-64 use home broadband, only 51% or half of all U.S. adults 65 and older do. Without question, "robo" advisers are geared to a younger audience, and will be beyond the reach of fully half of all U.S. adults age 65 and older.<sup>42</sup>

The Center's research that is explained in the *Feeding America* presentation raises important concerns about the DOL's recommendation of online "robo" advisers for small investors. Based on the Center's research, it is clear that many small savers in the groups identified above, that have lower rates of home broadband access, won't be able to adequately utilize an online "robo" adviser. Having highlighted these important issues, the *Feeding America* presentation then turns to the question of smartphone internet connectivity and understanding its effect on home broadband use.

### ***Smartphones And The Shift Towards Wireless Connectivity***

One of the last slides in the *Feeding America* presentation reviews the Center's prior research that suggests that some adults may be abandoning home broadband connections for "smartphone only" access to the internet. This chart shows that, as of 2015, 13% of all U.S. adults had a "Smartphone, but no broadband at home", which was up from 8% in 2013, and that this increase occurred while "Broadband at home" connections dropped by 3%. Also, the Center identified several groups that, during the same period, had significant increases in the number of people with "Smartphone, but no broadband at home" status, which included African Americans (+9 to 19%), rural residents (+6 to 15%), and persons with household income less than \$20k per year (+8 to 21%), between \$20k and \$50k per year (+6 to 16%), and between \$50k and \$75k per year ((+5 to 10%), all with similar drops in home broadband connections. This shift toward "smartphone-only" access raises the question whether such access should be accepted as "adequate" to use an online "robo" adviser for purposes of this public policy debate. For the following reasons, we believe that the answer to this question is a resounding "no."

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<sup>40</sup> Adoption rates, however, are only one component of the digital divide. A person's comfort level with technology and the rate in which they use the internet at work and in their everyday lives also varies by income group. While 81% of workers whose annual household incomes are \$100k or more spend at least some of their day using the internet for work-related tasks, that usage rate drops to 36% among workers living in lower-income households. See Anderson, "Digital divide persists even as lower-income Americans make gains in tech adoption", *Pew Research Center* (March 22, 2017), available online at [www.pewresearch.org/fact-tank/2017/03/22/digital-divide-persists-even-as-lower-income](http://www.pewresearch.org/fact-tank/2017/03/22/digital-divide-persists-even-as-lower-income).

<sup>41</sup> The FCC estimates that more than 23 million people in rural areas lack "fast" internet access. See "Microsoft Backs Rural Broadband System", *WSJ* (July 11, 2017).

<sup>42</sup> In fact, as reported by the *WSJ*, 60% of Wealthfront's clients are under the age of 35. See Tergesen, "Robo Adviser Wealthfront Co-Founder Andy Rachleff Reclaims CEO Post", *WSJ* (Updated October 31, 2016).

- For low-income households, smartphone-only access is too tenuous to replace traditional advice* – Based on a more recent survey, the Center has determined that only 12% of U.S. adults were “smartphone-only” internet users in 2016, down from the 13% it found in 2015.<sup>43</sup> In the same survey, the Center found that reliance on smartphones to get online is heavily weighted toward lower income households. In 2016, 20% of adults whose annual household income was below \$30,000 were smartphone-only internet users, compared with only 12% in 2013. Where annual household income was between \$30k and \$99,999, smartphone-only internet users rose from 7% in 2013, to 10% in 2016. But for those with household income of \$100k or more, the number of smartphone-only internet users stayed constant at 4%, suggesting that when money is less of a factor, people prefer both a smartphone and home broadband. Also, according to a 2015 report by the Center, fully 48% of “smartphone-dependent” Americans have had to cancel or shut off their cell phone service for a period of time because the cost of maintaining that service was a financial hardship. In addition, 30% of smartphone-dependent Americans “frequently” reach the maximum amount of data that they are allowed by their cell phone plan, and 51% say that this happens to them at least “occasionally.”<sup>44</sup> When almost half of smartphone-dependent users have had to shut off their service due to financial concerns, and almost one-third frequently get temporarily limited by their data plans, the intermittent “smartphone-only” internet access of low-income Americans is too tenuous to replace traditional advice, and should not be credited as adequate to use an online “robo” adviser.
- The FCC has concluded that mobile broadband service is not an adequate substitute for fixed broadband* – As previously discussed, the FCC is charged with determining whether high speed broadband service is being deployed to all Americans in a ‘reasonable and timely fashion’ and must issue an annual report detailing its findings. In its’ 2016 Broadband Progress Report, the FCC considered for the first time whether mobile broadband service was an acceptable substitute for fixed broadband, and whether high speed broadband is deployed wherever consumers have access to either service.<sup>45</sup> The FCC concluded that fixed and mobile broadband were *not* functional substitutes for one another, and that high speed broadband should be deemed deployed only where consumers have access to *both* services.<sup>46</sup> As determined by the FCC, smartphone internet access via mobile broadband is not the functional equivalent of fixed broadband in the home, and therefore should not be counted as adequate to replace traditional advice for purposes of this public policy debate.

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<sup>43</sup> Rainie and Perrin, “10 facts about smartphones as the iPhone turns 10” (June 28, 2017), online at [www.pewresearch.org](http://www.pewresearch.org) (the survey was conducted between Sept. 29 – Nov. 6, 2016).

<sup>44</sup> Smith and Page, “U.S. Smartphone Use in 2015” (April 2015), online at <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/>. In this study, “smartphone dependent” meant that the person had no broadband at home and had limited options for online access other than the smartphone, which the Center determined to be 7% of the public.

<sup>45</sup> See 2016 Broadband Progress Report, *infra* n. 28, at pgs. 10-15. In its analysis, the FCC highlighted the differences between fixed and mobile broadband services. The FCC noted that “[m]obile transmissions are subject to environmental factors that fixed line transmissions do not encounter and, thus, cannot achieve the same kinds of consistent speeds at the current level of technology.” Further, it noted that mobile devices must be portable and smaller which limits their “computational abilities . . . and makes their interfaces smaller, especially screens.” The FCC recognized the unique advantages of mobile devices which include an “innovative ecosystem of user-friendly apps” that can “give directions, recommend nearby businesses, or even alert a user when friends are nearby.” The FCC acknowledged that mobile broadband had developed a “special relationship” with social media, as it allows for easy updating from “live events.” Importantly, the FCC pointed out that fixed broadband services do not face the same “limitations regarding capacity and congestion that affect mobile broadband networks” and that due to much higher data caps, fixed broadband services are “generally far less expensive on a cost-per gigabyte basis than mobile broadband services.” *Id.* at pgs. 13-14.

<sup>46</sup> *Id.* at pg. 8, para. 17.

- Because of growing concerns about security, smartphones aren't yet a safe place for small savers to conduct retirement investing* – Mobile devices are coming under increasing attack. McAfee Labs found more than 1.5 million new incidents of mobile malware in just the first quarter of 2017 alone.<sup>47</sup> Last August, the Pegasus spyware was uncovered, which was capable of hacking any iPad or iPhone to surveil the owner and steal data from the device. By April 2017, a version of the Pegasus spyware had attacked Android operating systems; by masquerading as a normal “app” download and secretly gaining root access, it was able to do broad surveillance of the user over time. One expert recently wrote that “[a]n individual’s personal and enterprise data is most vulnerable via mobile devices since most of time spent is away from secure networks, on public Wi-Fi and on apps they do not control.”<sup>48</sup> Last year, 60 Minutes aired a segment called “Hacking Your Phone”, wherein a group of hackers in Germany demonstrated how easy it was to “spoof” a hotel wi-fi service and trick unsuspecting users into logging on and granting a hacker complete access to the information on the phone.<sup>49</sup> During that segment, one “hacker” opined that the “greatest weakness in mobile security is human nature. [. . .] They install malicious applications. They give up their passwords every day. And it’s really hard to fix that human element.” To emphasize this point, we note that the Center found, in a 2016 survey, that fully 28% of U.S. smartphone owners don’t even use a screen lock, much less any other feature, to secure their phones.<sup>50</sup> Also, though anti-virus software is commonplace on desktop and laptop computers, only 32% of smartphone owners report installing some sort of anti-virus software on their smartphones.<sup>51</sup> In light of the increasing risks to information stored and transmitted on mobile devices, it is counter-productive to encourage small investors to access online “robo” advisers from a smartphone. At this early stage of the evolution of smartphone security, smartphone internet access should not be accepted as a substitute for fixed broadband at home, which offers a much safer environment.
- Non-home broadband adopters are increasingly likely to view lack of home broadband as a major disadvantage in key areas of life* - According to a survey conducted by the Center in 2010 and 2015, those without home high-speed broadband service are much more likely now than in the past to say that lacking home broadband is a *major* disadvantage when it comes to accessing government services, searching for employment, following the news, learning new things, or getting health information. According to the Center’s report, published in December 2015, two-thirds (65%) of non-adopters said that lacking home broadband service was a major disadvantage in at least one of these areas, compared to less than half (48%) who said so in 2010.<sup>52</sup> This dramatic increase of 17 percentage points occurred over much of the same period that saw the significant rise in the number of persons with “smartphone-only” internet access. It’s an easy lift to suggest that the two trends are related. Increased desire for a home broadband connection among “smartphone-only” persons could very well be related to the significantly slower download speeds offered by the four nationwide mobile providers, the fastest of which was

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<sup>47</sup> Collett, “Five new threats to your mobile device security” (Aug. 1, 2017), online at [www.csoonline.com](http://www.csoonline.com).

<sup>48</sup> King, “Mobile Device Threat Data – Q1 2017 – Zimperium Mobile Security Blog” (May 18, 2017) at <https://blog.zimperium.com/mobile-device-threat-data-q1-2017>.

<sup>49</sup> Alfonsi, “Hacking Your Phone” (April 2016), at <http://www.cbsnews.com/news/60-minutes-hacking-your-phone/>.

<sup>50</sup> Rainie and Perrin, “10 facts about smartphones as the iPhone turns 10” (June 28, 2017), online at [www.pewresearch.org](http://www.pewresearch.org) (the survey was conducted between Sept. 29 – Nov. 6, 2016).

<sup>51</sup> Olmstead and Smith, “Americans and Cybersecurity” (January 26, 2017), online at [www.pewresearch.org](http://www.pewresearch.org) (2. Password management and mobile security).

<sup>52</sup> Horrigan and Duggan, “Home Broadband 2015” (December 21, 2015), online at [www.pewinternet.org/2015/12/21/home-broadband-2015/](http://www.pewinternet.org/2015/12/21/home-broadband-2015/).

recently rated at 19.51 Mbps.<sup>53</sup> Moreover, those speeds are vastly slower than the fixed broadband speeds that are available to 86% of Americans, which the FCC puts at 50 Mbps or higher download speed service.<sup>54</sup> To add insult to injury, the processors found in smartphones have been estimated to be 8 times slower than a standard processor used in a laptop computer, and the prospects for their improvement are limited by the increased power demands of faster processors and the competing need for reasonable battery life in a mobile device.<sup>55</sup> Undoubtedly, the growing number of “non-adopters” that say that the lack of home broadband service is a major disadvantage is a clear indication that lesser forms of internet access should not be deemed adequate in this public policy debate.

The popularity of smartphones is undeniable, as 77% of U.S. adults now say they own a smartphone.<sup>56</sup> As smartphone ownership has grown, so have the ways that people use smartphones. In a 2015 report, the Center found that 62% of smartphone owners had used their phones in the prior year to get information about a health condition, 57% to do online banking, 44% to look up real estate listings or information about a place to live, 43% to look up information about a job, and 40% to look up information on government services.<sup>57</sup> Of these activities, the one that most resembles online investing is, of course, online banking. With over half of smartphone owners having gotten comfortable using their smartphones to do online banking, why should we think that online investing on a smartphone won't be as successful? As one expert put it, smartphone banking is secure “because if something happens, the bank makes good on it . . .”<sup>58</sup>

Think about it. Online banking works because the banks want it to, and they have the financial wherewithal to stand behind their customers. Banks are in favor of digital banking because they stand to reap huge cost savings from shifting their legacy customers from branch banking to less expensive online banking. In addition, there's a federal regulation that requires banks to reimburse their customers for fraud losses that exceed \$50, provided the customer reports the fraud within 60 days. Of course online banking is not perfectly safe, but when individual customers incur losses due to cyber fraud, banks reimburse their customers for the losses, work hard to improve their cybersecurity, and for the most part everyone's happy. But will such a symbiotic relationship develop between online “robo” advisers and

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<sup>53</sup> See FCC's Nineteenth Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services (September 23, 2016) at pg. 10612. (In September 2016, the FCC released its annual mobile wireless report which contained the results of speed tests of the four nationwide mobile providers. In each test performed, the mean download speeds for each of the carriers was significantly slower than the 25 Mbps / 3 Mbps speeds the FCC requires for an adequate fixed broadband connection. For example, the “FCC Speed Test” estimated the Mean LTE Download Speeds for the second-half of 2015 as follows: AT&T – 13.92 Mbps; Sprint – 13.27 Mbps; T-Mobile – 19.51 Mbps; and Verizon – 17.51 Mbps.)

<sup>54</sup> The FCC stated in its 2016 Broadband Progress Report that the Form 477 data suggests that 86% of Americans have access to fixed 50 Mbps or higher download broadband service. See FCC, 2016 Broadband Progress Report (Released January 29, 2016) at pg. 13, fn. 85.

<sup>55</sup> Smith, “Why Your Smartphone Won't Be Your Next PC” (August 2013)(a standard processor in a laptop computer was estimated to be about 8 times faster than a smartphone processor), online at [www.digitaltrends.com/computing/why-your-smartphone-wont-be-your-next-pc](http://www.digitaltrends.com/computing/why-your-smartphone-wont-be-your-next-pc) .

<sup>56</sup> Rainie and Perrin, “10 facts about smartphones as the iPhone turns 10” (June 28, 2017), online at [www.pewresearch.org](http://www.pewresearch.org) (the survey was conducted between Sept. 29 – Nov. 6, 2016). (Smartphone ownership is more common among the young, as 92% of 18 to 29 year olds say they own a smartphone, compared to only 42% of those who are ages 65 and older. Also, lower-income households, where many small savers likely reside, have less than average rates of smartphone ownership. Only 64% of households earning less than \$30k per year, and 74% of households earning between \$30k and \$49,999 per year, say they own a smartphone.)

<sup>57</sup> Smith, “U.S. Smartphone Use in 2015” (April 2015) (smartphone use based on a survey conducted in October 2014), online at [www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/](http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/).

<sup>58</sup> Gerencer, “Is iPhone Banking Safe? An Expert Answers” (July 2015), online at [www.schneider.com/news/archives/2015/07/is\\_iphone\\_banking\\_sa.html](http://www.schneider.com/news/archives/2015/07/is_iphone_banking_sa.html).

small investors? No one can know for sure, but one important part of such a potential relationship is missing. Most online “robo” advisers are relatively new ventures that don’t stand to reap substantial cost savings from moving legacy customers to a cheaper way of doing business. If they choose to absorb their customers’ cyber fraud losses, they will be doing so solely out of current revenue streams. In addition, there’s no statute or regulation that requires investment advisers to absorb customers’ cyber fraud losses.<sup>59</sup>

It is not for us to speculate as to how the relationship between “robo” advisers and their customers may develop. The question we must ask is much easier to answer. Should the DOL be limiting small savers who do not have a home broadband connection to brave the new online world of “robo” advisers, armed with only a smartphone, in order to get advice? The answer to that question has to be no. Leaving small savers little option but to conduct retirement investing via their smartphones with an online “robo” adviser is likely to be a regrettable policy choice.

### *Conclusion*

For all intents and purposes, the Rule reduces the ability of modest investors to save for retirement using a commission-based IRA. The DOL essentially acknowledged this outcome when it began touting online “robo” advisers as the answer for small savers. Unfortunately, the Rule failed to account for the “digital divide” that still exists in America, where the latest available research indicates that there are almost twice as many African American and Hispanic adults in the U.S. who lack home broadband service, as there are Whites. This reality means that the online solution for small investors is much more likely to be beyond the reach of African Americans and Hispanic Americans, as opposed to Whites. Other groups disenfranchised by the Rule are lower income and rural Americans, those living on Tribal lands, and those over age 65, all of which have significantly lower levels of home broadband use. The research cited in this letter demonstrates that because the Rule will limit access to personal investment help for these groups, it will have a disparate impact.

That the Rule leaves middle-income savers looking to online automated advisers for investment help should be proof enough that the Rule is seriously flawed and must be withdrawn. Even modest investors deserve options. It is perplexing that the Rule’s proponents recognized, and made allowances to deal with, the “digital divide” in other contexts, but not here.<sup>60</sup> Ignoring it now stands to work serious harm on the retirement prospects for these Americans. We respectfully request that the DOL consider the impact of the Rule on the communities we serve throughout the country.

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<sup>59</sup> We must note that Wealthfront’s Terms of Use contains the following statement in section 2.2: “As a User you agree that you shall be solely responsible for any activities or actions under your User Account, whether or not you have authorized such activities or actions.” See [www.wealthfront.com/legal/terms](http://www.wealthfront.com/legal/terms).

<sup>60</sup> The Department and other organizations that support the Rule have cited the “digital divide” in lobbying against internet based solutions to document delivery. See Statement of Paul Schott Stevens President & CEO, Investment Company Institute, Before the U.S. House of Representatives, Committee on Ways and Means, Subcommittee on Oversight, on “The Department of Labor’s Proposed Fiduciary Rule” (September 30, 2015) at page 12: “It is particularly curious that many of the very same organizations that oppose efforts to make better use of the Internet for delivery of information to investors and plan participants, support the Department’s rule proposal that seems intent on sending many retirement savers to robo advisers. In lobbying against Internet-based solutions to document delivery, such groups often cite the existence of an alleged “digital divide” in which individuals in certain ethnic groups, occupations, or income levels are less likely to have computers at home or access to the Internet. Yet, neither these organizations nor the Department offer any explanation as to why these very same people would not also be vulnerable to a shift to Internet-based advice services.” Citing Letter from Barbara Roper, Consumer Federation of America, regarding SEC Proposal, Investment Company Reporting Modernization (July 29, 2015), available at [www.sec.gov/comments/s7-08-15/s70815-40.pdf](http://www.sec.gov/comments/s7-08-15/s70815-40.pdf); and Letter from AFL-CIO, Consumer Union, Pension Rights Center and others to Department of Labor Assistant Secretary Phyllis C. Borzi (April 19, 2012), available at [www.pensionrights.org/sites/default/files/docs/120419\\_group\\_letter\\_and\\_memorandum\\_on\\_electronic\\_disclosure.pdf](http://www.pensionrights.org/sites/default/files/docs/120419_group_letter_and_memorandum_on_electronic_disclosure.pdf).

Sincerely,



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Chairman  
African American Leadership Council



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