September 8, 2015

Senator Claire McCaskill
730 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator McCaskill,

We are writing to respond to your August 5 letter sent to the Department of Labor (DOL) regarding the proposed rule to put the best interests of Americans saving for retirement first.

Those who have managed to save only a modest amount for retirement have the most to lose from the current, outdated rules and the most to gain from the DOL's updated proposal. In fact, the DOL's Regulatory Impact Analysis (RIA) found these Main Street investors stand to lose nearly $430 billion to conflicted advice over the next decade. Billions of dollars can be kept in their pockets annually if conflicts among broker-dealers, insurance agents, and others in the industry were properly mitigated.

Your letter expresses a broad concern that the proposed rule would "stifle access to meaningful investment advice for millions of Main Street investors." The DOL rule will not create an advice gap for two reasons. First, brokers and insurance agents will adapt to the new rule rather than withdraw their services and lose the revenue they can earn from the trillions of dollars in retirement savings that Americans must decide how to invest. Second, even if some advisers choose not to serve small clients under a best interest standard, there is a large and rapidly expanding group of advisers who already serve accounts of all sizes as fiduciaries. They offer low-cost, high-quality advice to individuals and small businesses, and they are ready and willing to take on more clients.

Next, your letter suggests the rule would adversely impact commission-based business models. As a threshold point, the commission-based compensation model prevalent among brokers today does not deserve to be preserved if it allows powerful conflicts of interest which hurt retirement savers by promoting high-cost, low-performing investment choices. In any case, the DOL's proposed rule would permit advisers to continue charging commission-based compensation under the Best Interest Contract (BIC) Exemption. At the same time, it would require advisers to make sensible commitments to act in their clients' best interest, charge reasonable fees, and mitigate existing conflicts of interest. Under the rule, investors will be able to choose the business model they prefer—including commission-based—while also receiving the highest standard of care and loyalty from their advisers.

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Another recurrent theme in your letter is that under the proposal, investors may not have access to basic financial education. In fact, the rule will allow advisers to share an enormous amount of information with their clients before ever triggering the best interest standard, including general financial information, information about particular plans or IRAs, and even asset allocation models and interactive investment materials. At the same time, the DOL's proposed rule closes loopholes often exploited by advisers making recommendations under the guise of education.

Along these same lines, your fear that any conversation about rollovers would invariably trigger the fiduciary duty is inaccurate. Discussing the general costs and benefits of rollovers is considered education. At the point at which specific recommendations are given, including for rollovers, the best interest standard will apply, and rightly so. Rolling funds out of a defined benefit or defined contribution plan and into an IRA is one of the most important financial decisions people will make. IRAs today account for a substantial portion of Americans' retirement savings: $7.6 trillion, and the DOL notes in its RIA that "the vast majority of IRA assets today are attributable to rollovers from plans." Especially in the case of rollovers, where so much is at stake, the DOL must not make exceptions that could potentially allow advisers to steer investors into high-cost, low-quality investments. The rule must be strong in this area, as well as others, to ensure your constituents have the best advice possible when making decisions impacting their savings for the duration of their retirement.

We understand and share your desire to ensure that small businesses can establish high quality retirement plans for the benefit of their employees. The DOL proposal deserves your support for this very reason. It will allow advisers and platform providers to give small plan sponsors a wide range of educational information and investment menu options without triggering the fiduciary duty. At the same time, the rule recognizes that small businesses need protection against conflicts of interest for essentially the same reason that individual investors do: they are not experts in finance or retirement planning, and they need high-quality, unbiased advice. Thus, the rule ensures that any adviser seeking to make specific recommendations to a small employer about retirement plan options must adhere to the best interest standard.

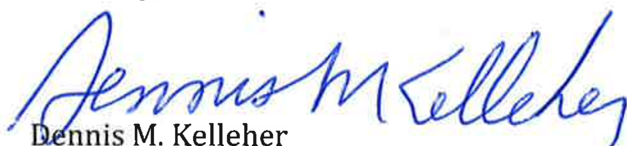
You also express concern that current investors will face an "arduous process" as the firms they work with come into compliance with a finalized DOL rule. In reality, the BIC exemption only comes into play when an adviser insists on receiving commission based compensation for giving advice, and many advisers avoid this type of conflict by charging on a fee basis. If the BIC does apply in a given situation, the investor faces very little in the way of "process," most of which involves reviewing a contract designed for their benefit and signing it. For decades, brokerage firms have routinely insisted that their clients sign pages and pages of fine print contracts designed principally for the benefit of the adviser. The paperwork under the BIC actually represents a vast improvement over the status quo in both form and substance. It should be welcomed, not portrayed as an unfortunate burden for investors.

Last, with respect to coordination, it is very clear that the DOL has coordinated extensively with the SEC throughout the rulemaking process and will continue to do so, to avoid conflicting standards of conduct for advisers. This is evidenced in countless testimonial appearances and public statements by Secretary of Labor Tom Perez, as well as Securities and Exchange Commission (SEC) Chair Mary Jo White. In addition, the DOL has documented the extensive

consultation pursuant to Congressional requests. With respect to the Financial Industry Regulatory Authority (FINRA), we submit that the self-regulatory organization has a limited amount to offer in terms of constructive input on the DOL rule. In part this stems from the fact that FINRA is dedicated to enforcing a much weaker standard among it broker-dealer members, known as "suitability." In addition, FINRA's comments on the DOL's proposed rule reflect a deeply engrained hostility to the application of a strong fiduciary standard to all advisers. In any event, and to its credit, the DOL has always welcomed and thoughtfully evaluated input from all stakeholders, even those in the industry, including FINRA, who oppose this very important reform.

This rulemaking has benefited from years of input and an unprecedented comment period that will last more than 150 days. The DOL's proposed rule will provide enormous, common sense, and long overdue benefits to Americans saving for retirement. They deserve to have their best interests put first by those who are advising them.

Sincerely,



Dennis M. Kelleher
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