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August 6, 2020

SUBMITTED VIA REGULATIONS.GOV

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

RE: ZRIN 1210-ZA29, "Improving Investment Advice for Workers & Retirees"

Dear Secretary Scalia:

We write in response to the July 6, 2020, notice of proposed class exemption titled "Improving Investment Advice for Workers & Retirees"¹ and the July 7, 2020, final rule titled "Conflict of Interest Rule—Retirement Investment Advice: Notice of Court Vacatur."² Republican Members of the Committee on Education and Labor (Committee) have a long-standing interest in Department of Labor (DOL) regulations defining "fiduciary" under the *Employee Retirement Income Security Act of 1974* (ERISA) and ERISA's prohibited transaction exemptions. Serving on the Committee with jurisdiction over these issues in the House of Representatives, Committee Republicans have long-held that changes to regulations involving DOL's interpretation of ERISA "should facilitate and not hinder customer-oriented innovations and advancements, and not add to the cost to businesses and individuals obtaining investment services."³ We are encouraged by the proposed class exemption and the final rule and are hopeful that these actions will improve access to high-quality, affordable investment advice that is in the best interest of workers and retirees.

¹ Improving Investment Advice for Workers & Retirees, 85 Fed. Reg. 40,834 (proposed July 7, 2020).

² Conflict of Interest Rule—Retirement Investment Advice: Notice of Court Vacatur, 85 Fed. Reg. 40,589 (July 7, 2020) (to be codified at 29 C.F.R. pts. 2509 & 2510).

³ Letter from John Kline, Chairman, H. Comm. on Educ. & the Workforce, et al., to Hilda L. Solis, Sec'y of Lab. (Apr. 14, 2011), https://republicans-edlabor.house.gov/uploadedfiles/erisa_letter_4-11.pdf.

The Honorable Eugene Scalia

August 6, 2020

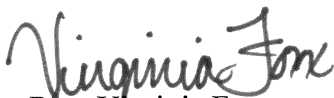
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Our concerns with the Obama administration's fiduciary rule are well-documented and have been discussed exhaustively in Committee hearings, correspondence, and legislative activity.⁴ The Obama administration's partisan fiduciary regulation, rather than furthering the interests of America's retirement savers, was instead "motivated by an insatiable desire to reengineer the retirement services industry and control the mode and manner" by which Americans save for retirement.⁵ We continue to believe the flawed 2016 fiduciary regulation would "reduce access to investment options, increase costs for retirement savers and workers' families, and make it more difficult for small businesses to offer retirement plans." We were encouraged to see the U.S. Court of Appeals for the Fifth Circuit vacate the 2016 rule and its "fundamentally flawed exercise in federal overreach" that only made it more difficult for Americans to save for retirement.⁶

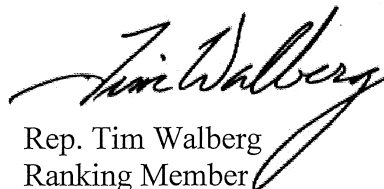
We also applaud DOL for finally taking seriously our previously-stated concerns, and those of many of our colleagues, that prior rulemaking attempts conflicted with Securities and Exchange Commission (SEC) rulemakings authorized by the *Dodd-Frank Wall Street Reform and Consumer Protection Act*.⁷ Under the Obama administration, DOL "refused to provide an adequate response" to inquiries regarding DOL's coordination with the SEC.⁸ We support the Trump administration's proposed prohibited transaction exemption, which will "promote regulatory efficiencies that might not otherwise exist under the Department's existing administrative exemptions for investment advice fiduciaries."⁹

DOL plays an important role in interpreting and enforcing ERISA's fiduciary duties, which are vital to protecting America's retirement savers. In our view, DOL's regulations and guidance related to ERISA must not limit consumer choice and access to retirement advice. We look forward to continuing to work with DOL to further policies that expand access to high-quality, affordable retirement advice for workers and retirees, and we urge swift implementation of a final class exemption.

Respectfully submitted,



Rep. Virginia Foxx
Ranking Member



Rep. Tim Walberg
Ranking Member
Subcommittee on Health, Employment,
Labor, and Pensions

⁴ See H. REPT. NO. 115-371 (2017).

⁵ Letter from John Kline, Chairman, H. Comm. on Educ. & the Workforce, et al., to Thomas E. Perez, Sec'y of Lab. (July 21, 2015), https://republicans-edlabor.house.gov/uploadedfiles/7-21-15-_dol_fiduciary_rule.pdf.

⁶ Press Release, Foxx and Roe Praise Circuit Court of Appeals Ruling to Vacate Obama-era Fiduciary Rule (Mar. 16, 2018), <https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=402583>.

⁷ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 913, 124 Stat. 1376, 1824 (2010).

⁸ Letter from John Kline et al. to Thomas E. Perez, *supra* note 5.

⁹ Improving Investment Advice for Workers & Retirees, 85 Fed. Reg. at 40,836.