

# Congress of the United States

Washington, DC 20515

October 30, 2015

Thomas E. Perez  
Secretary  
United States Department of Labor  
200 Constitution Ave., NW  
Washington, D.C. 20210

Dear Secretary Perez:

We write regarding the Department of Labor's (DOL) April 14, 2015 proposed rule, RIN 1210-AB32 (the Rule), defining who is a "fiduciary" of an employee benefit plan or individual retirement plan under the Employee Retirement Income Security Act (ERISA) of 1974 and the Internal Revenue Code of 1986.

The retirement savings gap for all Americans is a staggering \$14 trillion, with one-in-five Americans who are approaching retirement age having zero private retirement savings. For this reason we fully support and share the Department's goal of ensuring that financial advisors act in the best interests of their clients. We also know you agree that the Rule should protect consumers rather than limit consumer choice and access to advice. We are excited by the potential availability of a new generation of low-cost and high-quality financial services that this rule will facilitate. However, we also believe the best way to ensure the Rule achieves these objectives is to open up a fully legal and expedited comment period for the changes you are considering.

We appreciate your openness in listening to all stakeholders during an extensive comment period, including multiple days of hearings. You have responded to outside input in many important ways including withdrawing the original rule in 2010, hosting and attending over 100 meetings with Congress and interested parties, extending the original comment period, and soliciting a second round of comments on the re-proposed rule. You have been honest in your commitment to making changes to the Rule based on feedback in order to streamline various processes, allow legitimate financial education, and protect consumers.

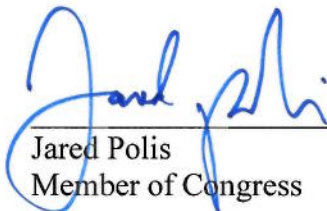
We hope your open process takes into account the high number of outstanding "Questions" and "Requests for Comments" in the Rule, as well as the incredible volume of feedback the Rule has received. To date, there have been multiple letters requesting changes to the proposed Rule from members of both parties in Congress – including one letter with 96 Democratic cosigners – as well as more than 3,500 public comments. It is essential that you have the opportunity to carefully consider all the public input from these comments, and receive feedback on the specific changes you are considering making within the Rule prior to finalizing it. Otherwise, it will be harder to discern if the Rule can be implemented without unintended consequences particularly regarding the provision of high-quality financial advice to low and middle income American families.

Given your Department's commitment to transparency and public input, we request that upon determining the specific changes the DOL will make to the Rule, you open a 15-30 day comment period prior to finalizing the Rule. This can be done without disrupting your intended timeline of implementing the Rule by the end of 2016 while complying with the Administrative Procedure Act (APA). In order to accomplish this timeline, you can submit the Rule to OMB for an expedited review period, which could last less than a week, as has been the case during multiple other rulemakings. It is within your agency's legal authority to request and receive this expedited timeline. The review period would be followed by the publication of the new version of the Rule in the Federal Register to begin a very short comment period. This would allow you to receive the necessary feedback from all parties on the changes that you make in the Rule. You would then be able to make final changes based on this short comment period, and presumably finalize the Rule.

A supplemental shortened comment period was found to be legal in 2001 under the APA in *Texas Office of Public Utility Counsel v. FCC* by the U.S. Court of Appeals for the Fifth Circuit. Given the significance of this Rule in the lives of all Americans, particularly middle-class individuals, and the existing precedent for providing a supplemental comment period, we strongly encourage you to consider this approach.


Thank you for your attention, and we look forward to a positive response to this request.

Sincerely,

  
\_\_\_\_\_  
Jared Polis  
Member of Congress

  
\_\_\_\_\_  
Ann M. Kuster  
Member of Congress

  
\_\_\_\_\_  
Kathleen M. Rice  
Member of Congress

  
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Tony Cárdenas  
Member of Congress

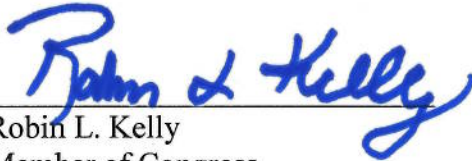
  
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Grace Meng  
Member of Congress



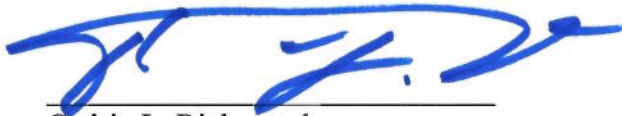
Mike Quigley  
Member of Congress



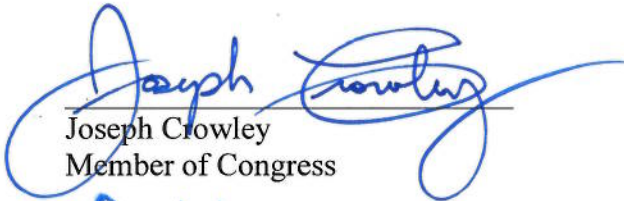
David Scott  
Member of Congress



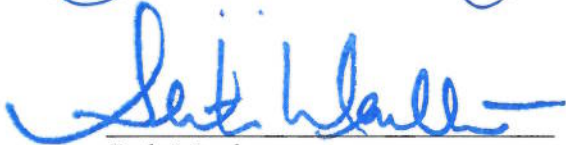
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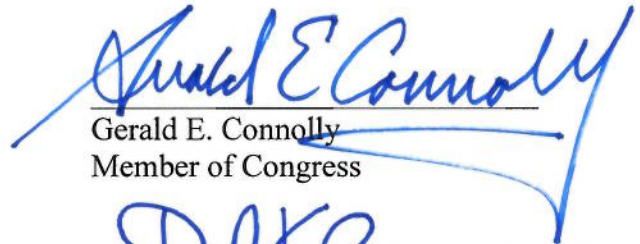
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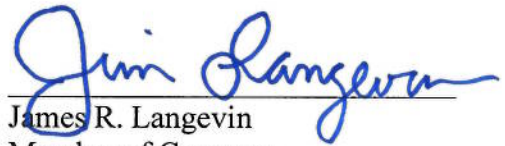
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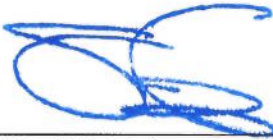
Jim Costa  
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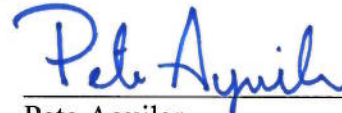
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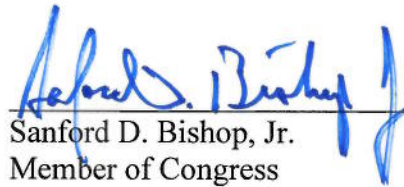
Brad Ashford  
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Norma J. Torres  
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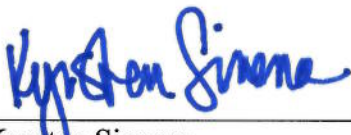
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