PRIMERICA®

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July 20, 2015

U.S. Department of Labor
Office of Regulations and Interpretations
Employee Benefits Security Administration
200 Constitution Avenue, NW
Washington, DC 20210

Re: Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice (RIN 1210-AB32)

Ladies and Gentlemen:

I am the Chairwoman of Primerica's Women in Primerica Leadership Council, which is a group of licensed financial representatives devoted to expanding financial services and flexible, entrepreneurial business opportunities to women across the nation. I write to offer our concerns that the Department's proposed Conflict of Interest Rule ("Proposed Rule") will disparately harm our members and the middle-income individuals and families we serve.

Saving for retirement is among the most important priorities for Main Street Americans.[1] However, the retirement savings challenges are difficult [2] and sometimes particularly difficult for women. For example, women are more likely to live longer and have a greater need for retirement assets despite often earning less than men. We are also less likely to work at employers who sponsor a workplace retirement plan.[3] In our experience, the real issue for women is not that our retirement accounts are negatively affected by conflicts but that far too many of us have simply failed to accumulate meaningful retirement savings. The reality is women must overcome a complex set of factors outside of income to achieve our retirement goals.

Studies confirm that financial representatives add substantial value to their client's financial, and retirement well-being.[4] A recent study conducted by consulting firm Oliver Wyman determined that on average, individuals that use a financial representative have more assets than non-advised individuals across all age and income levels examined. [5] Moreover, with respect to individuals in or approaching retirement, the differences in assets are even more significant. On average, advised

[1] 2010 Survey of Consumer Finances, Federal Reserve Board (June 2012).
[2] "The 2015 Retirement Confidence Survey: Having a Retirement Savings Plan a Key Factor in Americans' Retirement Confidence," EBRI Issue Brief #413 (April 2015).
[3] "Impact of Retirement Risk on Women: 2013 Risks and Process of Retirement Survey Report," WISER.
[4] Oliver Wyman: The role of financial advisors in the US retirement market (July 6, 2015). Oliver Wyman states that it ". . . was engaged to perform a rigorous investigation of the role of financial advisors in the US retirement market, and quantify differences in investing behavior and outcomes between advised and non-advised individuals."
[5] Id. at 16

individuals ages 55-64 had 51% more assets than non-advised individuals, and those 65 and older had 113% more assets (i.e. more than double) than the non-advised.[6] These are meaningful differences in assets for middle-income individuals that use financial representatives, which should translate into significant improvements in their retirement living.[7] In fact, our experience demonstrates that women substantially benefit when they connect with other women about financial decisions. Making more critical the need for representatives to educate and assist women with retirement investments is that a record number of women with children under the age of 18, 40%, are now the primary source of income for the family.[8]

We are concerned that the Department's Proposed Rule will expand the definition of "fiduciary" so broadly that nearly every conversation our members have with potential retirement savers will be construed as fiduciary advice. As such, compensation in connection with the assistance we provide will be subject to reversal and prohibited transaction penalties unless it falls within an exemption. We understand that the Department sought to craft an exemption, designated as the Best Interest Contract Exemption ("BIC Exemption"), that purportedly would allow the continuation of the assistance we provide. Regrettably, the extensive burdens, complexity and impracticality of the BIC Exemption are so great as to make it unworkable. The Proposed Rule will in effect create a roadblock that will prevent middle-income Americans, many of whom reside in the communities we serve, from receiving affordable individual retirement services.

In particular, the Department's Proposed Rule targets the very popular brokerage-based IRA pursuant to which financial representatives earn a commission for in-person education and assistance. These are exactly the types of services our members provide the individuals we serve. The effect will be that broker-dealers and their financial representatives like us will be compelled to fundamentally restructure their IRA businesses. The result for millions of hard working Americans in the middle-income market will be higher minimum account balances, reduced access to financial professionals, reduced investor choice and ultimately, lost opportunity to accumulate meaningful retirement savings on a tax-deferred basis. The new economic realities will favor higher-cost investment services designed for affluent families over those that help to empower the middle-class.

As a result of the Proposed Rule, middle-income families will have less opportunity to achieve their retirement goals because the lower cost commission-based services they benefit from today will no longer be available for IRAs. Those with higher net worths may receive assistance through a fee-based adviser, which is the most expensive way to get retirement education and advice because they actively manage the invested assets full-time. They are also not readily available to middle-income individuals because 80% of fee-based advisers target individuals with at least $250,000 in assets.[9] In fact, clients using fee-based advice have on average over $600,000 in assets.[10]

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[6] Id. at 16

[7] Id. The study states that their findings hold true even when excluding survey respondents who anticipate receiving retirement income from either an inheritance or trust fund.

[8] Wang, Wendy, Parker, Kim, and Taylor, Paul, Pew Research Center, *Breadwinner Moms*, (May 29, 2013).

[9] *Financial Planning for the Middle-Class*, Kiplinger, August 2011.

[10] Skinner, Liz, Investment News, *Advisory fees rise above 1% after bottoming in 2013*, (March 30, 2015).

However, many of the families we serve are unwilling or unable to pay hourly fees for one-on-one service. Hourly rates typically range between $250-500 per hour, "with the total outlay ranging from $3,000-5,000."[11] Many of the individuals we serve start with initial investments of $250 or less. For example, we open IRAs for as little an investment as $50 per month. Charging an upfront fee of $250 per hour would have created an insurmountable barrier for many of our first-time retirement savers whom we helped to take that first critical step to begin saving.

The impact will be particularly devastating for those with less than $25,000 to invest, which is the lowest required minimum investment for a fee-based advisor we can find. These potential savers will be left without tax-deferred savings options unless they are able to successfully navigate the overwhelming and complex online universe. Unfortunately, middle-class Americans are not comfortable using online technologies to purchase investment products or receive investment advice, and comfort levels appear to decrease with age and be higher for college graduates than for those without a college degree.[12] In short, initiating saving for retirement through an online provider is not something most workers are comfortable doing.[13] This is especially true of women who often are more likely than men to doubt their ability to make investment decisions.[14] Only 4% of IRAs are opened or maintained by online-only providers.[15] As a result, it is critical that middle-class women have affordable access to work one-on-one with a personal financial representative that provides the opportunity to get immediate answers to questions.[16] Working with a commission-based representative has provided that affordable access for many middle-class women, while fee-based advisers have provided access to only the more affluent.

Our final concern is that the Proposed Rule only applies to IRAs and tax-deferred vehicles but does not apply to taxable accounts. This backs us into an unwanted corner where all we will have to respond to the savings needs of many middle-income investors is taxable accounts instead of tax-deferred retirement accounts. Having one standard for retirement accounts and a different standard for all other accounts will create even more confusion and complexity for individuals than already exists.

The DOL believes the Proposed Rule is necessary to ensure that financial representatives that earn commissions by opening IRAs act in their clients' best interest. We do not have any concerns with working under a best interest standard but how it is imposed matters greatly for the financial well-being of the middle-income women we serve. For example, twenty-years ago one of our members sat down with a family in her community. The father was a pipe fitter and the mother worked as a stay-at-home mom. There was no 401(k) and unfortunately so many families in this particular community were in the steel industry where pensions disappeared. Our member helped this family open IRA accounts for both spouses who fully funded them over the past two decades. Today this family has some money for retirement. Our member says, "Before I saw that family, there was

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[11] Light, Larry, Forbes, *How Much Do Advisors Cost*, (July 26, 2012).

[12] "The 2012 Retirement Confidence Survey: Job Insecurity, Debt Weigh on Retirement Confidence, Savings," Employee Benefits Research Institute (March 2012)

[13] Supra note 3, stating "just 4 percent of workers report being very interested in obtaining investment education and advice online..."

[14] Supra note 8.

[15] ICI, "The Role of IRAs in U.S. Households' Savings for Retirement, 2014." (January 2015).

[16] "Advisors Matter," LIMRA (February 2013); *Supra* note 9.

nobody saving anything, which is so true of most people in Middle America. Nobody teaches anymore to live below your means, save your money, and make sure when you are 60-65 years old you can retire. And that is absolutely what we teach our clients so they do not end up at the poverty level in retirement." We are concerned the Proposed Rule inadvertently works against this purpose.

We urge the Department to withdraw and reconsider the Proposed Rule, as it likely will significantly add to the already difficult challenge that the communities we serve have of locating a personal financial representative who can help them meet their basic financial and retirement savings needs. "At the end of the day, it boils down to a crisis of confidence for women."[17] A crisis that can be remedied under the opportunities women have today to find affordable financial representatives. The effect will likely be women who are less confident and less prepared for their retirement years.

Sincerely,

Frances Avrett
Chairwoman

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[17] Sloan, Carrie, Forbes, *Afraid to Invest? You May Have Sit-It-Out Syndrome*, (October 14, 2013).