July 13, 2015

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Conflict of Interest Rule
Room N-5655, U.S. Department of Labor
200 Constitution Avenue NW.
Washington, DC 20210

To whom it may concern:

The Business and Industry Association (BIA) , New Hampshire's statewide chamber of commerce and leading business advocate, is concerned with the Department of Labor's (DOL) recent proposal to change the definition of fiduciary investment advice under the Employee Retirement Income Security Act of 1974 (ERISA). BIA's 400 plus members employ more than 86,000 people throughout the state. We believe there is a balanced approach that can protect investors as well as continue to provide access and choice in their retirement products and financial services providers. I am writing to encourage the DOL to make the changes necessary to both protect American savers and their ability to have choice and access to the financial products and services they want and need.

As with the DOL's original proposal in 2010, this rule would greatly expand the types of interactions with retirement savers that would be treated as investment advice. Given the extremely broad definition of investment advice and the potential impact the rule could have on financial advisers operating under certain compensation models, DOL proposed a new type of "principles-based" prohibited transaction exemption that grants relief to a financial services provider that agrees to act in the best interest of its customer. Most financial services advisers support the best interest framework in the rule and the principles-based standard.

Unfortunately, the proposal's new exemption does not apply to small businesses with participant-directed plans. Even if it did, the numerous conditions and restrictions placed in the exemption make it unworkable in practice. Essentially, this means that small plan sponsors cannot look either to advisers or record keepers for assistance in structuring fund line-ups. We are concerned that the current proposed rule will ultimately limit more than 3,000 small businesses in New Hampshire from receiving the help they need to establish and maintain a retirement plan. Without the ability to offer employees a competitive retirement savings package small businesses may be discouraged from offering such plans or terminating the plans that are already in place.

We are also concerned that the proposed rule ultimately limits individual investors' ability to seek access to affordable financial planning services and resources – even if those services and resources are in the saver's best interest.

We are requesting that prior to the publication of a final rule DOL work with representatives of the business and financial services communities to produce a workable rule that protects savers yet does not prevent our local businesses from continuing with their long-established service models that help our citizens to plan and save for retirement.

We have heard from BIA member companies who do not oppose the conceptual framework of the proposal which imposes a best interest standard for personalized investment advice and creates a principles-based exemption from the prohibited transaction rules. Those same companies have also told us that the proposed exemption is largely unworkable and will effectively prohibit substantial assistance.

Thank you for your consideration of our concerns and look forward to working with you on this very important issue that will potentially affect not only New Hampshire's business community, but our citizens as well.

Sincerely,
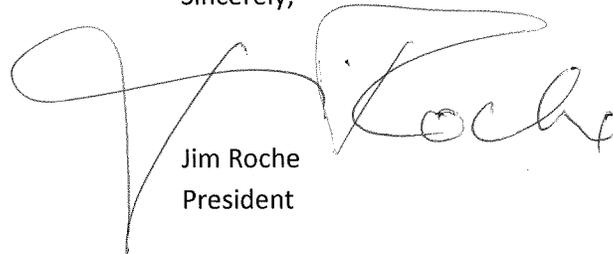
Jim Roche
President

C: Senator Jeanne Shaheen
    Senator Kelly Ayotte
    Congresswoman Ann McLane Kuster
    Congressman Frank Guinta