August 25, 2015

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

Re: Proposed Rule Regarding the Definition of the Term "Fiduciary:" Conflict of Interest Rule – Retirement Investment Advice
RIN 1210-AB32

Dear Sir or Madam:

I am writing regarding the Proposed Rule referenced above that was published in the Federal Register on April 20, 2015, Volume 80 at 21928. I strongly support the Department of Labor's efforts to enhance the definition of "fiduciary" in order to protect Retirement Plans and Participants from conflicts of interest and biased advice.

Given my support, I believe that one portion of the Proposed Rule – contained in Paragraph (b) (3) – could be modified to better meet the Department of Labor's objectives. Specifically, I am concerned with the broad carve-out from fiduciary status for platform providers that merely market and make available investment alternatives to Retirement Plans. My concern is that the proposed carve-out does not adequately protect Retirement Plans and Participants from the conflicts of interest that are prevalent among platform providers.

My views are in full accordance with a letter you received on July 21 from Martin E. Lybecker of Perkins Coie LLP on this same subject. In that letter, Mr. Lybecker cites an academic study entitled "It Pays to Set the Menu: Mutual Fund Investment Options in 401(k) Plans." This study demonstrates that platform providers tend to favor their own affiliated mutual funds, even when those affiliated funds perform poorly and that Participants are unlikely to overcome this affiliation bias when selecting their investments. I would like to add that this study will soon be published by the *Journal of Finance*, a highly-respected academic journal. In addition, an adapted version of this study written for a broad lay audience will be published by the Center for Retirement Research at Boston College, which I direct.

I would also like to cite one additional academic study relevant to the topic. The study – entitled “Participant Reaction and the Performance of Funds Offered by 401(k) Plans” – was published in the *Journal of Financial Intermediation*. It also finds that 401(k) menu selection matters. The results show that the funds chosen by 401(k) plan administrators achieve investment returns that are worse than comparable indexes.

My hope is that the Department of Labor will accept the specific suggestions outlined by Mr. Lybecker, which I believe have broad support, and modify the Proposed Rule accordingly.

Respectfully submitted,

Alicia H. Munnell
Director
Center for Retirement Research at Boston College