

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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WASHINGTON, D.C. 20062-2000
202/463-5310

April 20, 2016

The Honorable John Kline
Chairman
Committee on Education
and the Workforce
U.S. House of Representatives
Washington, DC 20515

The Honorable Robert Scott
Ranking Member
Committee on Education
and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Kline and Ranking Member Scott:

The U.S. Chamber of Commerce, the world's largest business federation representing the interest of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting and defending America's free enterprise system, supports H.J. Res. 88, which would rescind the Department of Labor's (DOL's) controversial "fiduciary" rule. The Chamber has continually expressed deep concerns about the negative impact of the fiduciary rule. While the final rule included some suggested changes to the proposal, serious concerns still remain, particularly about the impact on small businesses and individual savers. The Chamber believes that the DOL failed to address the concerns of small businesses. As a result, millions of small businesses may be precluded from offering retirement benefits to their employees.

Specifically, the final rule broadens the definition of investment advice to include routine communications, such as "sales" communications and certain marketing materials. However, the proposal carves out large plan advisors from this definition. If a plan fiduciary has \$50 million or more in assets under management or control, the advisor to that large plan is exempt from being a fiduciary, while an advisor to a plan fiduciary with less than \$50 million in assets under management or control, which primarily constitutes small businesses (and some mid-size businesses), is not. Therefore, an advisor trying to market retirement savings options to a small plan is considered to be providing investment advice and must determine how to comply with the rule, which means following the onerous requirements under the Best Interest Contract exemption. Due to these additional burdens, advisors to small plans are likely to incur increased litigation risk and additional costs, which will be passed on to the plan. Further, some advisors to small plans may decide to no longer offer their services to small plans if the expense and risk of changing business models and fee structures is not justified.

In addition, the final rule limits investment education to IRA owners, including small business employees participating in a SEP IRA or SIMPLE IRA plan. While advisors are

permitted to provide model asset allocations appropriate for IRA owners, they are not permitted to help identify specific funds or investment options that correlate to the model asset allocations. This restriction will make it more challenging for small business employees and may ultimately deter them from saving for retirement altogether.

At a time when we should be making it easier for workers to receive financial education and save for retirement, the DOL final rule makes it harder. As such, the Chamber supports your efforts, and the efforts of the Education and Workforce Committee, to ensure that small businesses and small savers are not hindered by overly-complex and burdensome rules in saving for retirement. The Chamber urges the members of the Committee on Education and the Workforce to expeditiously mark-up and report this resolution favorably to the full House of Representatives.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with a large initial "R" and a long, sweeping underline.

R. Bruce Josten

cc: Members of the Committee on Education and the Workforce