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Definition of Term Fiduciary; Conflict of Interest Rule-Retirement Investment

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Submitter Information

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General Comment

Dear Madam or Sir,

I am writing today in support of the swift implementation of this rule as written. In short, this rule is a wise, commonsense approach to ensuring that retirement funds are treated appropriately. The costs it imposes on the retirement industry are minimal. Other than a possible minor increase in litigation costs (addressed below), the only funds that the financial industry serves to lose are those that would be gained at the expense of current and future retirees. This rule should not be stalled simply so that the financial firms may line their own pockets and ignore conflicts of interest, while retirees suffer. If any lesson has been learned from the financial crisis, it should be that reasonable and unobtrusive regulations such as this one are a sensible safeguard against abuse.

In short, I agree with Ronald E. Hagan, a financial service professional with over 25 years of experience, who wrote in the Journal of Compensation and Benefits that the "results of [rules like this] nearly always increase confidence levels for Primary Fiduciaries, improve vendor relations, and most important, ensure better outcomes for

retirement plan participants." 27 No. 4 Journal of Compensation and Benefits ART 5.

Or to put it even more succinctly, as law professor Norman S. Poser has done, "[t]he idea that a broker should prefer his customers' interests over his own interests seems like a no-brainer." Reflections on the Securities Broker As A Fiduciary, 68 SMU L. Rev. 845, 853 (2015). Poser goes on to note that firms have been enriching themselves in ways that are often accompanied by conflicts of interest for their retail customers. Id.

Before closing, I would like to address why I believe the prospect of increased litigation as a result of this rule has been overstated. I am a licensed attorney who is no longer in private practice. During my time in litigation, I represented several clients in ERISA suits in the Northern District of Illinois. It is my opinion from that work and my related research, that the net impact of this rule will result in a fairly minimal increase in litigation over the long-run. Specifically, I believe that the increased litigation costs will be outweighed by the benefits to consumers.

This opinion is informed not only by my own experience, but also by the statistics. ERISA litigation has been decreasing in this country for some time now. For example, in the year 2013, United States District Courts saw a 9% decrease in the number of ERISA filings, falling to just 7,825 cases nationwide. "Federal Judicial Caseload Statistics 2013," <http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2013> (accessed March 8, 2017). Law360, a division of LexisNexis, similarly found a decline in the rates of ERISA litigation from 2004 to 2007, with only a minuscule increase in 2008 following the onset of the financial crisis. "After Holding Steady, ERISA Litigation On The Rise," Shannon Henson, <https://www.law360.com/articles/76804/after-holding-steady-erisa-litigation-on-the-rise> (accessed: March 8, 2017).

The specter of a litigation boom is based, primarily on unfounded fear (and, perhaps, on the reluctance of financial firms to set aside obvious conflicts of interest and to work in the best interests of their clients). The law imposes fiduciary duties on a number of different kinds of actors to positive effect. Here, the marginal potential for increased costs is outweighed by the great benefit to consumers.

Implementing this sensible, straightforward regulation will help the working women and men of this country to secure a better future. It will help those who are in or nearing retirement. And it will increase the wealth of our great nation, as a whole.

Thank you for your time and consideration.

Sincerely,
Josiah Jenkins