



Statement of the U.S. Chamber of Commerce

ON: Principles for Ensuring Retirement Advice Serves the Best Interest of Working Families and Retirees

TO: Subcommittee on Health, Employment, Labor and Pensions of the House Education and the Workforce Committee

BY: Rachel Doba, on behalf of the U.S. Chamber of Commerce

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The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

**TESTIMONY
ON
PRINCIPLES FOR ENSURING RETIREMENT ADVICE SERVES THE
BEST INTERESTS OF WORKING FAMILIES AND RETIREES
BEFORE
THE SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND
PENSIONS
OF THE
HOUSE EDUCATION AND THE WORKFORCE COMMITTEE
ON BEHALF OF THE
U.S. CHAMBER OF COMMERCE
BY
RACHEL DOBA
DECEMBER 2, 2015**

Thank you Chairman Roe, Ranking Member Polis, and members of the Subcommittee on Health, Employment, Labor, and Pensions of the House Education and Workforce Committee.

I am Rachel A. Doba, President of DB Engineering, LLC based in Indianapolis, Indiana. I am here representing the U.S. Chamber of Commerce of which I am a member of the U.S. Chamber Small Business Council.

DB Engineering is a civil engineering firm focusing on public works projects for the city and state. I started DB Engineering in November of 2008. When I hired my first full-time employee in 2010, I looked into the process to set up a 401(k) plan, which began in 2011. I now have 15 employees. Currently, the plan has a discretionary match but next year I am moving to a safe harbor plan which guarantees a 3% match for all employees and will allow me to provide profit sharing contributions. One way that we are able to compete is by offering employee benefits, including a retirement savings plan. As the owner of a business, I am focused on the details of my core business function—sales, finance, and manufacturing oversight—and use outside professionals to help me with supplemental business functions. For example, I use a Certified Public Accountant to assist with tax issues, attorneys to assist with legal issues, and a financial advisor to help me with my retirement savings plan.

Retirement security is not just a recruitment tool – it is a personal priority. In order to start my business in 2008, I cashed out my 401(k) account at my previous employer to get the needed start-up capital. In addition to taking a 10% early withdrawal penalty and an income tax hit, this action also occurred during a time

when the financial markets were in turmoil, so I received even less funds than I otherwise would have. Rebuilding the original balance has been a bigger challenge than I anticipated, and had I consulted a financial advisor, I potentially would have left as much of the funds as possible in the 401(k) account or rolled it over to an IRA. While I did research other sources for startup capital, I may have delayed our startup to pursue lengthier options rather than taking the financial hits in my retirement account. As such, my company's retirement benefits are just as critical to me as they are to my employees, and I have every incentive to ensure that we are getting great benefits at a fair price.

I have worked with my advisor since 2011—he is a trusted part of my team. Not only do I trust him to help me with implementing and maintaining my retirement plan, but also my employees trust him to provide educational materials that will help them make sound financial decisions. I am convinced that without the financial advisor most of my employees would not participate in the 401(k) plan and would not receive the benefit of the matching contribution.

I do not understand the reasoning behind this proposal. I have a trusted advisor that has provided great service, which has allowed me to provide retirement security for my employees and me. This proposal puts all of that in jeopardy. If there are concerns, the principles outlined by a bipartisan group of Congressmen, including the Chairman, should be followed.¹ All of the principles are important to promoting retirement security, but I want to highlight the principle stating that “Small business owners should have access to the financial advice and products they need to establish and maintain retirement plans and help workers save for retirement.” As a small business owner, I absolutely agree. Limiting options reduces competition that, in turn, drives up costs for my small business, as well as the costs that will be passed onto my employees and me as participants in the plan.

The Chamber earlier submitted a comment letter to the Department of Labor enumerating many ways in which the proposed rule is unworkable.² In my testimony, I would like to highlight three issues that will have a particularly negative impact on small business plans:

1. The seller's carve-out discriminates against small businesses and will decrease access to much-needed guidance.

¹ <https://roskam.house.gov/media-center/press-releases/bipartisan-house-members-outline-legislative-principles-ensure>.

² The Chamber's comment letter is attached to this testimony.

2. The changes to the education carve-out will restrict access to investment education for both small business owners and their employees.
3. The Best Interest Contract Exemption will increase the costs of services to small businesses and possibly eliminate access.

The seller's carve-out discriminates against small businesses and will decrease access to much-needed guidance. Under the proposal, there is a carve-out for advisors that are selling or marketing materials ("Seller's Carve-Out"). However, this carve-out does not apply to advisors to small businesses. DOL seems to believe that small business owners, such as me, are not as sophisticated as large businesses and, therefore, need additional protections. The validity of this rationale is based on faulty assumptions, and does not justify discriminatory treatment. When I work with my financial advisor, I am aware that he is providing a service for a fee and selling a product. I would not be able to run a successful business if I were not able to understand when I am involved in a sales discussion - particularly, if it follows a basic disclosure that an advisor is selling a proprietary financial product, that the advisor is paid to sell the product, and the advisor is not providing fiduciary advice. This disclosure, similar to that the Department requires in the large plan carve out, is readily understandable to any recipient.

The assumption that small plans, participants and IRA owners cannot understand the difference between sales and advice does not match my real world experience. The Department can protect participants, IRA owners and small plans with the same kind of disclosures that it requires of large plans under the large plan carve out, but without eliminating their right to choose the services and products that best fit their needs.

The changes to the education carve-out will restrict access to investment education for both small business owners and their employees. While the Proposal expressly permits education to be provided to plans, participants, and IRAs, the redefinition of asset allocation models that reference the plan's investment options as fiduciary advice will significantly disrupt plan sponsor efforts to educate their plan participants and retirees about investment options. Many small businesses, including mine, rely on trusted third parties to provide investment education to their employees. These efforts include providing asset allocation models that provide a recommendation on investments in various asset classes based on a plan participant's age, expected retirement and risk tolerance. However, under the Proposal, any party who provides specific investment options for each asset class would be deemed an ERISA fiduciary. This significant modification from current rules, which allows for

such information on a non-fiduciary basis, would harm investors, and particularly small business plan participants that likely have access to fewer resources.

My employees value the investment education provided to them—specifically providing investment recommendations in various asset classes. This information allows them to make informed investment decisions. Many of my employees cannot afford to pay for investment education separately and might be discouraged from investing in the plan at all if the company did not provide this benefit. By disallowing any party to make the link between asset classes and specific investment options, the Department of Labor is forcing plan participants into the tenuous position of figuring out how to invest their own retirement savings and risk making poor choices.

The Best Interest Contract Exemption will increase the costs of services to small businesses and possibly eliminate access. Because advisors to small businesses are not carved out of the fiduciary definition, they must change their fee arrangements, or qualify for a special rule called an “exemption” in order to provide services on the same terms as before.³ The reason the DOL regulatory package causes such significant change is that a fiduciary investment advisor under ERISA generally has engaged in a prohibited transaction if the advisor recommends investments that either pay the advisor a different amount than other investments, or that are offered by affiliates (for example, the advisor is connected with the insurance company that offers the investment). There are certain exceptions to these rules, called “prohibited transaction exemptions,” but as DOL has proposed the new rules, the exemptions generally won’t help financial advisors who are working with small businesses to set up plans. Therefore, it may be illegal for those advisors to get commissions or to recommend certain investments.

This problem is highlighted in services for SEP and SIMPLE IRAs. One way advisors might try to comply is by charging a flat fee for their SEP or SIMPLE IRA services. Even though DB Engineering has a 401(k) plan, there are Chamber members for whom a SEP or SIMPLE IRA is more practical. If these plans are no longer a viable option, there will be fewer small businesses that offer retirement benefits. Consequently, it is extremely important to consider the negative impact that increased costs will have—particularly in the small business plan market.

³ However, the new exemption proposed by DOL may not apply to small business plans. It does apply to individual owners of IRAs, but it is not clear whether this exemption is available for retirement plans—including SEP and SIMPLE IRAs—that are being offered by the employer. Further, even if it does apply, the new exemption—called the Best Interest Contract (“BIC”) Exemption—would itself substantially increase costs for advisors due to its many conditions and requirements.

In conclusion, for the reasons stated above, we are very concerned that the Proposal will not achieve the Department's goals of better protecting workers and retirees, but will instead make it harder for small business employers and employees to access financial advice and to increase retirement savings. I appreciate the DOL is looking to work with the industry to resolve our concerns. However, I am very concerned that the current timeline does not allow enough time for proper discussions. If the final rule does not properly resolve the issues raised above, the unintended consequences will have substantial negative repercussions on my employees, as well as the employees of many other small businesses.

Thank you for the opportunity to testify before you today and look forward to any questions you may have.