FINANCIAL PLANNING COALITION

July 18, 2017

Honorable Virginia Foxx
Chair
Education and Workforce Committee
U.S. House of Representatives
Washington, D.C. 20515

Honorable Bobby Scott
Ranking Member
Education and Workforce Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chair Fox, Ranking Member Scott and Members of the Committee:

On behalf of the Financial Planning Coalition (Coalition) – comprised of the Certified Financial Planner Board of Standards (CFP Board), Financial Planning Association® (FPA®) and National Association of Personal Financial Advisors (NAPFA), whose stakeholders and members account for 80,000 financial planning professionals in the U.S. -- we are writing to express our strong opposition to H.R. 2823, the "Affordable Retirement Advice for Savers Act," which will be considered by the Education and Workforce Committee on Wednesday.

We disagree that this bill is a more workable alternative to the Department of Labor (DOL) Conflict of Interest Rule (Fiduciary Rule), which the bill would repeal. In fact, the proposed legislation would weaken, not strengthen, protections for retirement savers; and would re-open loopholes in the definition of investment advice that the DOL closed in the Fiduciary Rule. In addition, the bill would weaken the standard that applies to advice by allowing financial firms and advisors easily to disclose away any fiduciary obligations owed to their clients.

Furthermore, the bill is based upon the mistaken belief that an alternative to the Fiduciary Rule is needed. The Coalition's support for the Fiduciary Rule reflects the real-world experience of the Coalition and its financial professionals and other stakeholders in applying a fiduciary standard across business and compensation models. Since 2008, when CFP Board established a fiduciary standard, CFP® professionals have been successfully providing fiduciary-level financial planning services in their client's best interest to large and small savers, across business models, and across compensation models. Based on this real-world experience, the Coalition believes the Fiduciary Rule is both workable and essential to protect America's retirement savers.

H.R. 2823 would re-open and expand loopholes that allowed advisors' interests to be misaligned with investors' interests. The bill would not only re-open the loopholes in the definition of retirement investment advice, but would expand those loopholes that the Fiduciary Rule closes. For example, the bill would allow an advisor simply to state in writing that the advice they are providing to their client is not "pursuant to a mutual agreement." The advisor also could easily disclaim any fiduciary duty by disclosing in writing that the advice is not individualized and that there is no intent for the client to materially rely on the advice. Firms and advisors would be allowed to provide unlimited advice to their clients, so long as they provide

disclosure in writing that they are only providing the advice in a “marketing or sales capacity” and that they are not providing the advice under the obligations of a best interest recommendation.

While the bill appears to include rollover recommendations under the definition of investment advice, which specifically includes advice about benefit withdrawals, it allows advisors, through expansive education carve-outs, to continue to encourage rollovers that benefit the advisors financially but expose their customers to increased costs and fees that erode their retirement nest eggs over time.

H.R. 2823 would weaken the fiduciary standard that applies to retirement investment advice. Despite outlining what it describes as a best interest standard for advice under the tax code, the bill would not genuinely require financial firms and advisors to work in their clients' best interests. While the bill includes a duty to disclose conflicts, it is completely silent on a fundamental component of the fiduciary standard – an obligation to establish policies and procedures to reduce and/or eliminate financial practices and incentives that give rise to **conflicts of interest**. A disclosure-based regime, which does not require mitigation of compensation practices and incentives that give rise to conflicts of interest among financial advisors, does not meet the basic requirements of a true fiduciary standard. Additionally, advisors would only be required to disclose specific fees if requested by the client.

Further, the bill would not require the advisor to provide advice without regard to the financial or other interests of the advisor. By excluding this essential component of the fiduciary standard, the bill is in direct opposition to a true fiduciary standard as defined under both ERISA and securities laws. Importantly, the “without regard to” language is a key component of the well-established and long-standing fiduciary standard under securities law.

Retirement savers need the protections of the DOL Fiduciary Rule. It is well documented that American workers saving for retirement lose out on billions of dollars each year as a result of relying on investment advice from financial professionals who put their own financial interests ahead of their customers' best interests. With critical provisions of the newly-updated Fiduciary Rule firmly in place, American retirement savers now know that financial professionals are required to put the retirement saver's best interests first – an essential and long overdue reform. Many in the financial services industry have publicly acknowledged the Fiduciary Rule's benefits to American retirement savers and are implementing policies and procedures to comply.

Rather than protecting American retirement savers, H.R. 2823 would once again put those consumers and their savings at risk. We urge you to oppose this bill and to support full implementation of the DOL Fiduciary Rule.

Sincerely,

Kevin R. Keller, CAE
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CFP Board

Lauren Schadle, CAE
Executive Director/CEO
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Chief Executive Officer
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