Testimony

of

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Chairman Roe, Ranking Member Polis, and members of the subcommittee, good morning, and thank you for this opportunity to testify.

My name is Jack Haley and I am an Executive Vice President at Fidelity Investments. I oversee a team of investment professionals dedicated to helping our employer clients and their workers have access to a wide array of high quality investment products and services to meet their investing needs.

At Fidelity, we have the privilege of helping more than 25 million people save for their financial goals and serving more than 14,000 workplace clients, close to 8,000 of which are small businesses[1] who offer retirement savings benefits to their workers.

From our roots as a small mutual fund company, Fidelity has grown into a diversified financial services leader. We are a premier asset manager; the nation's retirement leader in 401(k)s and IRAs; an award winning discount broker; and we provide clearing, custody, and practice management solutions to thousands of leading financial services firms as they help people and institutions invest for the future.

We offer the nation's largest mutual fund supermarket. With close to 700 fund families on our platform, we are at the leading edge of ensuring customers have the choice they desire when making investment decisions. For example, it may surprise you to hear that Fidelity is actually the largest distributor of PIMCO mutual funds. The team I lead sits at the nexus of investment products and our customers' saving vehicles, such as 401(k)s and IRAs.

Fidelity takes very seriously the responsibility of helping employers set up and offer robust and competitive retirement savings plans. I appreciate the opportunity to share with you our experiences helping small businesses provide retirement savings opportunities for their workers and to voice our

[1] Plans under 100 employees and under $100million in assets

concerns about the impacts of the Department of Labor's proposed rule on our ability to continue helping small businesses and their workers.

First, however, I want to answer a call from the Department of Labor, by stating directly, up front: Fidelity acts in the best interest of its clients and investors and we support a best interest fiduciary standard. We are proud of the services, products, and choices we provide to help customers achieve a secure retirement. Our data clearly show that access to financial guidance helps customers achieve better retirement outcomes. We fear the Department of Labor's proposed regulation will severely restrict our ability to continue providing this assistance to small businesses and workers in 401(k) plans.

We support a best interest fiduciary standard, but the details matter. A best interest standard must allow individual retirement savers and businesses offering retirement plans to have choice and access to the products and services that help them achieve a secure retirement. While the framework of the Department's proposed rule would theoretically preserve different service models when acting in the customer's best interest, the proposed Best Interest Contract (BIC) Exemption contains so many problematic conditions that the rule is unworkable as drafted and will have the effect of banning many well-established service models. Under the DOL proposal, access to affordable financial help will effectively be prohibited – *even when it is in the investor's best interest.* Small businesses and lower- and middle-income investors will be harmed the most.

We believe there is a balanced approach where savers can be protected by a best interest standard <u>and</u> continue to have access and choice in their retirement products, services, and providers. We look forward to continuing to work with Members of Congress and the Administration to ensure this balance is reached.

I. Impact on small businesses

Small business remains the lifeblood of our economy. According to the Small Business Administration, 99 percent of U.S. employers are small businesses. These companies produce 63 percent of all new private-sector jobs and include everything from your family doctor and local construction companies to entrepreneurs who may be the large employers of the future. Ten years ago, Facebook had only 15 employees. Today, it has grown to more than 9,000.

At Fidelity, small businesses make up close to 60 percent of our workplace clients for whom we help create, manage, and maintain retirement savings plans. These hardworking entrepreneurs and businesspeople bring significant expertise and passion to their work. We see a very strong desire from these employers to offer competitive, high-quality retirement savings benefits to attract and keep a highly-skilled workforce. Not surprisingly, with all they have to do to manage their businesses, there is little time, expertise, or desire to manage their retirement savings plans.

That is why small businesses turn to us. Every day we provide a range of critical services to ensure these employers and their workers have access to retirement savings plans. We help these companies understand and select the right savings vehicle -- whether it is a 401(k), SEP, or IRA -- and provide all of the critical functions to keep a plan running smoothly including:

- trustee and custodial support;
- recordkeeping;
- compliance testing and reporting;
- assist in selection of investment offerings;
- ongoing monitoring of investments; and,
- perhaps most importantly, participant education and guidance services.

Fidelity provides comprehensive, end-to-end investment services for new and existing clients. From the beginning of the relationship, a prospective client is given key insights for developing and designing an optimal plan line up for its employees. This includes a framework on how to design a plan for different levels of employee engagement, the number and types of investments to include, and how these should be structured in the plan investment lineup. For example, best practices suggest Target Date funds as the default option and starting place for most investors.

Next, Fidelity's research team provides a curated list of funds ("Funds for Discussion"), which helps the employer narrow from hundreds of funds available to a short list from which to select. This scalable process allows small plan sponsors access to quality information otherwise only affordable to larger employers.

Once an employer becomes a client, they continue to have access to Fidelity's research, investment consulting, thought leadership and best practices. For example, Fidelity produces over 14,000 client-specific Investment Reviews per year.

These reviews ensure the employer has the best high-quality investment products to meet their investment policy statement requirements and that their employees are well positioned to invest for their futures. If changes are required, Fidelity would provide the information needed to help the employer meet their fiduciary duties.

Every year, Fidelity receives an additional 1,500 new requests for help from small businesses who want to offer a plan.

Additionally, on a day-to-day basis, Fidelity offers best in class operational support, including contribution calculations, participant notifications, plan testing and reporting, as well as assistance with plan amendments. Employees receive employee education and financial planning advice through a variety of channels including Net Benefits, employee meetings, digital and mobile access, and one-on-one assistance with guidance representatives skilled in the client's specific plan design.

Unfortunately, the Department of Labor's proposal would put a stop to these offerings. The Labor proposal would classify the assistance we provide to small businesses (which today is education) as fiduciary investment advice.

Curiously, the rule's BIC Exemption, which is intended to preserve different service models, does not apply to assistance provided to small business plans (defined as plans with less than 100 employees or less than $100 million in assets.) In other words, the proposed DOL rule specifically prohibits service providers from assisting small businesses. The result would have a devastating impact on retirement coverage and savings for millions of workers employed by small businesses across the country. This, at a time when policymakers on both sides of the aisle are looking for opportunities to provide American workers with access to retirement savings plans.

To reiterate, we support a best interest fiduciary standard. But without exemptive relief from ERISA's strict rules, Fidelity would be prohibited from providing these critical services to our small business clients – even when the help we provide them is in their best interest.

II. Why guidance matters

Just as important as the services we provide to small businesses is the critical education and guidance we provide to their employees every day. Let me tell you a personal story which underscores the universal need for this kind of education.

I began my career here in Washington as a research analyst at the Government Finance Research Center where I had a retirement account with TIAA-CREF. At 26, I accepted a job at Fidelity, and what did I do with my retirement savings? I did the worst thing someone could do – I cashed out.

I might not have made that decision had I talked to a financial professional who would have explained the negative consequences of cashing out – such as taxes, penalties, and a smaller retirement nest egg.

At Fidelity, standing up for the best interests of our customers means more than just meeting a legal standard. It includes encouraging workers to keep their savings in-plan when we know their investment options are better and providing a human experience – from ushering new workers into our community of retirement savers to helping a new widow decide her next steps in protecting her own future.

Some have suggested that technological developments have negated the need for the personalized support we provide to employers and their workers. We wholly support innovation, but I can assure you, a robo-advisor will not have a discussion with you about the perils of cashing out. And our representatives know acting in a client's best interest means being able to help workers plan for the long-term when they are facing important decisions today.

Today, the average worker has more than 11 employers over the course of his or her career. With job mobility on the rise, education and guidance at the time of job transitions is more critical than ever to protect the retirement security of these workers. The importance of this education is underscored by a recent study from the Boston College Center for Retirement Research, which found that individuals prematurely withdraw nearly $200 billion annually from their retirement savings[2]. Without access to critical assistance at the time of a career transition, this number would be even higher.

Under the proposed rule, many of these ordinary conversations could now be considered personalized investment advice, even if the conversation is merely educational and there is no discussion of investments or advice given. A best interest standard must ensure job changers are not disadvantaged at these critical transition periods in their lives.

III. Contract requirement

[2] The Impact of Leakages from 401(k)s and IRAs, BC Center for Retirement Research, February 2015

Our assistance to small businesses and their employees also includes basic everyday assistance to ensure workers are on the right path to a secure retirement. Today, we are able to help these workers by discussing *potential* product and service offerings with them. The proposed DOL exemption would require a signed contract *before* a conversation could even occur. And since our customers speak to different phone reps each time they call, the rule would require *each of our customers* to have a signed contract with *each of our phone reps* in order to get answers to these basic questions. For Fidelity, requiring our nearly 25 million customers to sign contracts before we can continue to service them would be a significant impediment to ongoing engagement with them, potentially suppressing their savings levels and retirement security.

IV. Unworkable disclosures

Not only are the logistics of entering into a contract with all plan participants and IRA holders unworkable, but the proposal is also unworkable because it requires an unreasonable amount of confusing disclosures. The proposal requires three separate types of disclosures: (1) a point of sale disclosure of the total cost of each recommended investment projected over one-, five-, and ten-year periods; (2) an annual disclosure of the compensation payable to the advisor in dollar amounts for the preceding year; and (3) maintenance of a publicly available website showing information about compensation payable to the advisor with respect to all assets that can be purchased by a plan, participant, or IRA investor.

These disclosure requirements, some of which conflict with existing FINRA requirements, are completely unworkable, would confuse workers, and do nothing to help them better understand potential conflicts. We believe a single disclosure of material conflicts of the advisor, including compensation payable to the advisor in connection with the recommended transactions, will best support the purpose of a best interest standard.

The contract and disclosure requirements are clearly not in a workers' best interest.

Closing

These are just a few of the examples of the critical services we provide to small businesses and their employees and the real concerns we have with parts of the proposal which would harm the very people the rule intends to protect. There is a much longer list of additional issues which will be outlined in more detail next month when we file official comments with the Department on its proposal.

Fidelity feels strongly that a balanced approach which provides investors with fiduciary best interest protections but retains existing service models critical to ensuring retirement preparedness is achievable. This is the commitment the Administration gave earlier this year when the President announced his support for the proposal. Unfortunately, the DOL proposal does not deliver on this commitment. We look forward to working with you in the coming months to ensure that a best interest standard preserves financial assistance and choice for individual retirement savers and businesses offering retirement plans.

Let me close by stating unequivocally that we support a best interest fiduciary standard but it must be crafted in a way that allows workers to the choice and access to the services they need and desire.