



1201 F St NW #200
Washington, D.C. 20004

May 30, 2018

R. Alexander Acosta, Secretary of Labor
Department of Labor
Attn: Employee Benefits
Security Administration
200 Constitution Avenue NW
Washington, DC 20210

The Honorable Jay Clayton, Chairman
c/o Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Dear Secretary Acosta and Chairman Clayton:

- RE: (1) Department of Labor, Notice titled "Definition of the Term 'Fiduciary;' Conflict of Interest Rule--Retirement Advice," **RIN 1210-AB32**, 81 *Fed. Reg.* 20946 (April 8, 2016) (final rule), *vacated*, *Chamber of Commerce v. Department of Labor*, 885 F. 3d 360 (5th Cir. March 15, 2018)
- (2) Securities and Exchange Commission, Notices titled "Regulation Best Interest," **File No. S7-07-18**, 83 *Fed. Reg.* 21574; "Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the Use of Certain Names or Titles," **File No. S07-08-18**, *id.* at 21416; and "Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation," **File No. S7-09-18**, *id.* at 21203 (all May 9, 2018) (proposed rules)

America's small and independent businesses in the financial industry cannot afford the army of lawyers and clerks needed to comply with the welter of complex rules issued or proposed by the U.S. Department of Labor (DOL) (Reference 1 above), the U.S. Securities and Exchange Commission (SEC) (Reference 2 above), and the several states to govern the duties of financial businesses toward their retail customers. The organizations you lead have their hearts in the right place and have worked diligently on the subject, but their work has yielded an excessively complex and costly result. The National Federation of Independent Business (NFIB) asks the two of you, acting together, to take corrective action for the benefit of the investing public and America's small and independent businesses in the financial industry.

NFIB is an incorporated nonprofit association with about 300,000 small and independent business members across America. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and, in particular, ensures that the governments of the United States and the fifty states hear the voice of

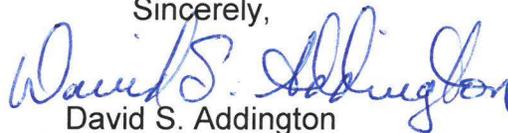
small business as they formulate public policies. The membership of NFIB includes small and independent businesses in the financial industry serving retail customers.

With Reference (1), DOL has exercised authority, principally under the Employee Retirement Income Security Act, to prescribe the legal duties of businesses in the financial industry toward their retail customers with respect to retirement accounts. With Reference (2), the SEC plans to exercise authority, principally under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940, to prescribe the legal duties of investment advisers, brokers, and dealers in the financial industry toward their retail customers. Also, various states regulate aspects of the relationships between the financial industry and retail customers that DOL and the SEC do not regulate.

The complex, overlapping, and costly structure of regulations that DOL, the SEC, and the several states are creating imposes an unreasonable burden on the financial industry. The burden falls especially heavily on the small and independent businesses in that industry, who have few resources to devote to identifying, deciphering, and complying with such regulations. The investing public and America's small and independent businesses need the Secretary of Labor and the SEC to exercise their respective statutory authorities to withdraw References (1) and (2) and jointly produce a single, integrated rule to govern, and to occupy fully with respect to interstate commerce, the field of the duties of financial businesses toward their retail customers.

DOL and SEC need not start from scratch. They should (a) take the large volume of work that both agencies have performed to date, (b) winnow the customer-protecting wheat from the bureaucracy-pleasing chaff, and (c) publish a slimmed-down and joint DOL-SEC proposed rule that meets the needs of the regulating agencies, the regulated businesses (especially including the small and independent ones), and the investing public.

Sincerely,

A handwritten signature in blue ink that reads "David S. Addington". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

David S. Addington

Senior Vice President and General Counsel

cc: Administrator, Office of Information and Regulatory Affairs
Attn: Desk Officers for Department of Labor and SEC
Office of Management and Budget
Washington, D.C. 20503