NCLR
NATIONAL COUNCIL OF LA RAZA

# TESTIMONY OF THE NATIONAL COUNCIL OF LA RAZA

Hearing on
"Preserving Retirement Security and Investment Choices for All Americans"

Submitted to
U.S. House of Representatives
Financial Services Committee
Subcommittees on Capital Markets and Government Sponsored Enterprises
and Oversight and Investigations

Submitted by
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September 10, 2015

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The National Council of La Raza (NCLR) is the largest national Hispanic civil rights and advocacy organization in the United States. We have a strong history of advancing consumer protections and retirement security through policy and practice. We have supported public policies to protect Latino and low-income consumers from harmful financial products, including mortgages with usury terms and short-term loans with exorbitant interest rates. One in four NCLR Affiliates—community-based organizations that serve millions of Hispanic Americans throughout the country—provides financial coaching and mortgage counseling. NCLR is also a leading voice for strengthening retirement savings among Latinos. Latinos are projected to account for a majority of the growth in the American workforce through 2050; therefore, avoiding a national retirement crisis hinges on Latinos' ability to save for retirement.

For these reasons, NCLR submits testimony signaling our **opposition to H.R. 1090**, the "Retail Investor Protection Act." Contrary to its misleading title, this piece of legislation would effectively end the Department of Labor's (DOL) efforts to protect retirement savers from bad investment advice. NCLR supports DOL's proposed conflict of interest rule on retirement investment advice because it would achieve that goal by closing loopholes in the definition of fiduciary investment advice that allow firms to evade their fiduciary obligations. At the same time, the proposal eases restrictions on the types of compensation financial firms can receive as long as they abide by appropriate regulatory restrictions, including requirements to act in the best interests of their client.

The proposed conflict of interest rule would strengthen the financial security of Hispanics, who are already disadvantaged in the retirement space. Structural factors inhibit Latinos from saving enough for retirement, making it all the more imperative that the advice they receive helps them improve savings and bolster their account balances. Further, as Latinos tend to have lower balances in their retirement account, higher fees represent a higher proportion of their retirement savings absorbed by advisers and financial institutions. Quality standards to protect Latinos and other low-income consumers from harmful advice are essential to promote retirement security and financial stability.

Please find attached NCLR's comments submitted to the Department of Labor in support of the conflict of interest rule. We urge you to oppose H.R. 1090 and any other efforts to thwart this rule-making, including the adoption of industry-advocated alternatives that fail to protect consumers or efforts to defund the rule-making process. Thank you for the opportunity to submit testimony for the record. Should you have any questions, please contact Amelia Collins at acollins@nclr.org.

Sincerely,

Eric Rodriquez
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July 20, 2015

**SUBMITTED BY ELECTRONIC DOCKET**

U.S. Department of Labor
Employee Benefits Security Administration
Office of Regulations and Interpretations
200 Constitution Avenue, NW
Room N-5655
Washington, DC 20210

**Re: Comments on RIN 1210-AB32: Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice**

To Whom It May Concern:

The National Council of La Raza (NCLR)—the largest national Hispanic* civil rights and advocacy organization in the United States—submits to the Employee Benefits Security Administration (EBSA) the following comments **in support** of the proposed regulatory changes to the definition of the term "fiduciary" for employee benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA).

NCLR has a strong history of advancing consumer protections and retirement security through policy and practice. We have supported public policies to protect Latino and low-income consumers from harmful financial products, including mortgages with usury terms and short-term loans with exorbitant interest rates. One in four NCLR Affiliates—community-based organizations that serve millions of Hispanic Americans throughout the country—provides financial coaching and mortgage counseling. NCLR is also a leading voice for strengthening retirement savings among Latinos. Latinos are projected to account for a majority of the growth in the American workforce between 2010 and 2050; therefore, avoiding a national retirement crisis hinges on Latinos' ability to save for retirement.[1] Protecting consumers who are making retirement investment decisions is vital to ensuring that those who have spent their lifetimes working to support their families have adequate savings.

The proposed rule would strengthen the financial security of Hispanics, who are already disadvantaged in the retirement space. Structural factors inhibit Latinos from saving enough for retirement, making it all the more imperative that the advice they receive helps them improve savings and bolster account balances. Further, as Latinos tend to have lower balances in their retirement accounts, higher fees represent a higher proportion of their retirement savings absorbed by advisers and financial institutions. This makes Latinos even more vulnerable to

* The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

financial instability. Instituting quality standards for advice provided for a fee is especially important to Latino and other low-income consumers to ensure that the advice they receive is truly in their best interest.

**Retirement Savings Are Already in Jeopardy**

Too many Americans have difficulty saving for retirement. The retirement savings deficit is exacerbated for communities of color, with 62% of Black and 69% of Hispanic households lacking any assets in a retirement account.[2] For those who do save, their account balances are disproportionately low: three in four Black households and four in five Latino households aged 25–64 have less than $10,000 in retirement savings, compared to one in two White households.[3]

The difficulty in saving for retirement is the result of a variety of factors, including low access to employer-sponsored retirement plans and lower rates of participation in those plans. Workers of color have less access to retirement savings vehicles compared to Whites: 38% of Latino employees, 54% of Black employees, and 54% of Asian employees aged 25–64 work for an employer that sponsors a retirement plan, compared to 62% of White employees.[4] Of those workers who have access to an employer-sponsored plan, not all participate, and the 29.7% Latino participation rate falls well below the 53.8% rate for Whites.[5]

Further, low wages make investing for retirement especially challenging as costs for housing, health care, and education rise—even as wages stagnate. According to a 2014 analysis, among lower-income individuals (below 300% of the federal poverty level), 22% reported that they participated in a pension plan at their current job between 1992 and 2010, compared to 59% of higher-income individuals (over 300% of the federal poverty level).[6] In 2011, 43.3% of employed Latinos earned poverty-level wages, compared to 23.4% of the White labor force.[7]

**Consumers Rely on Financial Advice to Navigate Complex Options**

Consumers capable of saving for retirement face an environment of complex investment options. Many Americans are unable to chart the course alone and rely on professional advisers to provide guidance. Overall, a recent survey found that 58% of households with traditional IRAs relied primarily on a professional financial adviser when crafting a retirement strategy.[8] Hispanics also rely on professionals for financial advice, with one survey finding that 6% seek advice from brokers and 17% seek advice from financial planners.[9] While this is relatively small compared to the 26.8% of non-Hispanic Americans who use financial planners, 17% is still a significant share, and any contact with an adviser is important to an individual's financial security.

One of the most common decisions in which advisers play a role occurs when an investor changes jobs. Investors must choose whether to cash out their existing defined-contribution retirement account or roll it over into an IRA. Given that Latino workers are more mobile relative to their peers, they face this financial decision more frequently. Rollovers are the primary source of funding for IRAs,[10] and one survey found that over a five-year period 40.2% of traditional IRA investors made a rollover transaction.[11] However, Latino workers tend to cash out their 401(k) balances at higher rates than other Americans. A study revealed that 57% of Hispanics who left an employer in 2010 cashed out their retirement plan compared to 39% of White workers.[12] The decision to cash out a savings plan is often not in the best interest of the consumer. Ensuring sound investment advice at this point in financial decision-making is critical to prevent the loss of savings.[†]

**Protecting Consumers from Conflicted Advice Is Essential for Financial Stability**
ERISA was enacted in 1974, before the creation of 401(k) plans and investment rollovers, to protect workers and their retirement investments. As the retirement savings market has evolved, the regulations protecting savers must evolve as well. In the current environment, 80% of financial advisers do not meet the criteria threshold to be considered a "fiduciary,"[13] allowing them to receive compensation through fees and commission based on the products their client selects after receiving advice. This breeds conflicts of interest where the best advice for the investor's retirement savings might not maximize profit for the adviser. The proposed regulations would help prevent the negative consequences of conflicted advice by ensuring that those acting as a fiduciary make recommendations that are in the best interest of the investor.

Mitigating these conflicts of interest would result in greater financial security for consumers and the economy at large. IRAs and 401(k) plans together hold the greatest portion of retirement assets, estimated at almost $12 trillion,[14] demonstrating the potential economic impact of conflicted advice on investors. A report by the White House Council of Economic Advisers found that conflicted advice regarding IRA accounts alone results in billions in lost savings. Specifically, the report found that conflicted advice leads to lower investment returns of about one percentage point per year, translating to $17 billion in lost returns annually.[15] In 2014, more than 34 million households owned IRAs,[16] with over 21% of those households having an annual income under $50,000.[17] Lower returns as a result of conflicted advice translate to less money upon retirement for a population already struggling to save enough.

Contrary to the assertion by some stakeholders in the financial services industry, the revised definition of fiduciary will not unduly restrict financial advisers from serving low- to middle-income savers. Numerous companies already serve this population as fiduciaries with a low-fee model, including Wealthfront, Vanguard, and Seabridge Wealth Management.[18,19,20] These firms offer low-fee services and have emerged as leaders in the industry: Vanguard is the second-largest exchange-traded fund (ETF) provider, with over $430 billion in ETF assets, composing roughly 22% of market share.[21] NCLR considers it a missed opportunity that mainstream plan sponsors tend not to target lower-income consumers, and we support the efforts of companies that are venturing into this space with innovative products. When businesses are willing, they can successfully adapt their products and policies to serve low-balance accounts and savers with lower income streams.

[†] Age is likely a major factor in Latinos' higher rate of cashing out. Analysis by Fidelity found that younger workers are more likely to cash out their 401(k) retirement plans entirely when switching employers, with 43% of those aged 20–29 doing so. Fidelity Viewpoints, "Beware of Cashing Out," March 15, 2015, www.fidelity.com/viewpoints/retirement/cashing-out (accessed June 2015). As the Hispanic population's median age is 10 years less than that of the general U.S. population (27 vs. 37), ill-advised decisions to withdraw retirement savings could have a greater impact on young Latino workers. Seth Motel and Eileen Patten, *The 10 Largest Hispanic Origin Groups: Characteristics, Rankings, Top Countries* (Washington, DC: Pew Research Center), www.pewhispanic.org/2012/06/27/ii-demographics-3 (accessed June 2015).

**Proposed Rule Is a Positive Step Toward Reducing Barriers to Saving**

A holistic approach to achieving financial security must include adequate savings for retirement, but too many households are not saving enough. Strong protections against unscrupulous investment advice are necessary to protect consumers and their assets from the adverse consequences of conflicts of interest. Even though Latinos use financial advisers and planners at relatively low rates, they receive high-stakes advice because they already face structural barriers to saving and investing. The proposed rule by the Department of Labor to redefine which retirement investment advisers must act in the best interest of their clients would provide consumers with a mechanism to hold their advisers to a high standard, clarifying the fiduciary relationship and transparently outlining cost and compensation structures. These protections and others in the rule are essential to ensuring that retirement advice is in the best interest of those saving for retirement.

Thank you for this opportunity to comment on the proposed revisions to regulations regarding retirement investment advice. Should you have any questions on these comments, please contact Amelia Collins at acollins@nclr.org or (202) 776-1578.

Sincerely,

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**Endnotes**

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[6] April Yanyuan Wu, Matthew Rutledge, and Jacob Penglase, *Why Don't Lower-Income Individuals Have Pensions?*, Issue Brief 14-8 (Chestnut Hill, MA: Center for Retirement Research at Boston College, 2014), http://crr.bc.edu/briefs/why-don%E2%80%99t-lower-income-individuals-have-pensions (accessed May 2015).
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