WOODSTOCK INSTITUTE

Advancing Economic Security and Community Prosperity

March 23, 2016

Via E-mail & U.S. Mail

Senator Mark Kirk
524 Hart Senate Office Building
Washington DC, 20510

Dear Senator Kirk:

Woodstock Institute[i], along with Bethel New Life, Chicago Community Loan Fund, Heartland Alliance for Human Needs & Human Rights, Illinois Asset Building Group, Northwest Side Housing Center, and SEIU Healthcare Illinois, are writing to express our opposition to S. 2505 (the "SAVERS Act of 2016").

S. 2505 would preserve the ability of financial professionals to put their own interests ahead of their customers' interests when providing advice that customers need to make critical retirement investment decisions. The effect of (and apparent purpose behind) the bill is to block the Department of Labor's (DOL's) proposed "fiduciary rule," which we believe would better protect customers "from conflicts of interest, imprudence, and disloyalty."[ii] The DOL's proposed rule offers a balanced approach that expands the range of advisory services covered by ERISA's fiduciary standard while allowing firms to operate under a broad range of business models.

The current rules that are in effect make it easy for a financial advisor to avoid fiduciary responsibility. S. 2505 does not address this problem; it codifies it. Under S. 2505, a financial advisor can avoid fiduciary responsibility by simply providing (1) a written disclaimer that the advice is not intended to be materially relied upon by the customer and (2) a disclosure by the advisor that the advice is not actually investment advice.

The ability of advisors to avoid fiduciary responsibility harms consumers. Over the past few decades, there has been a significant shift from defined benefit to defined contribution plans, making more consumers responsible for their own retirement investments. Consumers are faced with complex and confusing systems and a multitude of decisions that can become easily overwhelming. A 2012 study by the Securities and Exchange Commission shows that many Americans lack the level of financial literacy to understand important concepts necessary for investing and managing retirement accounts.[iii] The study noted that this lack of financial literacy has serious negative implications for people's ability to adequately save for retirement, especially given the increased use of defined contribution plans. S. 2505 leaves consumers with few, if any, individuals on whom they can safely rely to guide them in this important area.

S. 2505 seems to place great weight on the value of "disclosure" in protecting consumers, but disclosure is insufficient to protect consumers and can, in fact, give consumers a false sense of security, making them *more* likely to rely on the conflicted advice. Research by prominent behavioral economists shows that, while disclosure seems to be in a consumer's best interests, in the case of conflicts of interest, it backfires and is actually bad for the person the disclosure is intended to benefit.[iv]

Quite simply, disclaimers and disclosures do not ensure that a consumer will not rely on his or her advisor's statements. Relying on advice from financial advisers who do not act as a fiduciary can be extremely costly for consumers. The negative impact of misguided investment decisions and unnecessary costs can add up over time, and consumers may be unaware that they are depleting their savings or costing themselves money on long-term investments. According to the DOL, the underperformance of investments due to these conflicts of interest could cost IRA investors between $210 billion and $430 billion over the next ten years, and between $500 billion and one trillion dollars over the next 20 years.[v] Those estimates are based solely on investments in mutual funds for IRAs, so the overall costs to investors are likely even higher.

Perhaps S. 2505 is attempting to take into account the concerns of industry. The financial industry is fighting the proposed DOL rule, commenting that it would be unduly burdensome. But, as explained in a letter to the DOL by Sen. Warren and Rep. Cummings, the industry has offered conflicting statements about the DOL's proposed rule.[vi] For example, Dennis Glass, president and CEO of Lincoln National, submitted a comment to the DOL stating that the proposed rule would be "immensely burdensome" and "extremely intrusive," but in a statement to investors, Mr. Glass stated, "We don't see this as a significant hurdle for continuing to grow that business." As Sen. Warren and Rep. Cummings point out, "when communicating with investors, publicly traded companies are required by law to provide full and accurate information." Correspondingly, we must assume that Mr. Glass's statement to investors is true and that the proposed rule would not be a "significant hurdle" for the company.

We ask that you consider statements by the industry to its investors, such as the statement of Mr. Glass, alongside the demonstrated need and vulnerability of consumers in the area of retirement savings and advice. Taking those two factors into account, it is apparent that the DOL's propose fiduciary role, and not S. 2505, strikes the right balance between the interests of industry and consumers. Therefore, we urge you to reconsider your sponsorship of S. 2505.

Thank you for your consideration.

Very truly yours,

WOODSTOCK INSTITUTE
BETHEL NEW LIFE
CHICAGO COMMUNITY LOAN FUND
HEARTLAND ALLIANCE FOR HUMAN NEEDS & HUMAN RIGHTS
ILLINOIS ASSET BUILDING GROUP
NORTHWEST SIDE HOUSING CENTER
SEIU HEALTHCARE ILLINOIS

[i] Woodstock Institute is a leading nonprofit research and policy organization in the areas of equitable lending and investments, wealth creation and preservation, and safe and affordable financial products, services, and systems. Our mission is to create a just financial system in which lower-wealth persons and communities, and people and communities of color, can achieve economic security and community prosperity.

[ii] 80 FR 21929.

[iii] Study Regarding the Financial Literacy Among Investors, As Required by Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Staff of the Office of Investor Education and Advocacy of the U.S. Securities and Exchange Commission. August 2012. http://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf

[iv] Loewenstein, George; Daylian M. Cain; and Sunita Sah. "The Limits of Transparency: Pitfalls and Potential of Disclosing." http://www.cmu.edu/dietrich/sds/docs/loewenstein/PitfallsdisclosingCOI.pdf

[v] Fiduciary Investment Advice: Regulatory Impact Analysis, April 14, 2015. http://www.dol.gov/ebsa/pdf/conflictsofinterestria.pdf

[vi] *See The Hill,* February 11, 2016. http://thehill.com/policy/finance/269073-warren-cummings-financial-firms-exaggerate-harm-from-fiduciary-rule