<u>ADDITIONAL TALKING POINTS – HR 2374</u>

The Department of Labor has been hard at work on a rule that would make sure that when investment advisers and brokers hold themselves out as impartial retirement experts, their pension plan and IRA customers can count on advice that is in the retiree's best interest and that isn't motivated by dangerous conflicts of interest designed to benefit the seller at the expense of ordinary retirement savers.

As part of that effort, Labor plans to publish a proposed rule, class exemptions that would permit beneficial fee practices, and a robust economic analysis demonstrating the need for the rule – and demonstrating the huge costs of current practices in which retirement advice is all too often marred by large and direct conflicts of interest.

HR 2374 proposes to stop these efforts in their tracks, so that there isn't even a public discussion of the merits of Labor's proposals and analysis. While stopping the public debate may be in the interest of Wall Street and the financial services industry, it isn't in the public interest.

Under the proposed legislation, Labor cannot prescribe any reforms until 60 days after the SEC issues a final rule relating to the standards of conduct for brokers and dealers pursuant to the Securities Exchange Act of 1934. This effort to shield the financial services industry from a public debate would create a dangerous and unwarranted precedent –

- Labor's separate authority and responsibility to protect the interests of retirement plan participants and IRA owners should not be tied in this manner to the work of another agency under an entirely different statutory scheme with different provisions, goals, and structure.

- The SEC has not yet proposed any rule on this issue, let alone completed one. The legislation sets no timeline for completion of an SEC rule. If the SEC rule were never completed, the Department of Labor could never prescribe a fiduciary regulation.

- The next step in the Department's regulatory process is not a final rule. It's a proposal. The Department simply puts all of its work out for notice and comment by the public. This is the right course of action. Congress should permit people to see what the Department proposes and say what they think about the proposal.

- The public is poorly served by legislation designed to keep people from having an open and public discussion of the Department of Labor's proposals for reforming the marketplace for retirement advice and for protecting investors from dangerous conflicts of interest.

- It would send a terrible and cynical message about government oversight of Wall Street and the financial services industry if Congress passed legislation that prevents the Department of Labor from even engaging in a public conversation about how best to protect vulnerable retirees in the retirement market

- Although the legislation is offered in the name of coordination, it does nothing to promote coordination. Preventing the Department of Labor from proposing a regulation doesn't promote coordination -- it hinders it. The public can only tell the Department whether a proposal creates unforeseen compliance problems or conflicts with other statutory schemes, when it has had an opportunity to see the proposal.

- The legislation is overbroad. Although Labor's current regulatory efforts concern advisers, the bill would stop Labor from writing any regulations, including exemptions, defining the circumstances in which a person is a fiduciary for any purpose, such as by virtue of managing plan assets or engaging in plan administration. Similarly, Labor's responsibilities extend far beyond SEC-regulated brokers, but the Department would be precluded from writing regulations governing consultants and advisers who aren't brokers, aren't regulated by the SEC, and aren't giving advice with respect to investment products covered by the SEC.

Congress should decline to let the financial services industry avoid a public debate about the Department of Labor's ideas or choose who they would prefer to regulate their conduct and in what sequence.