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Congress of the United States

March 30, 2011

Chair
Select Intelligence Oversight Panel
Committee on Appropriations

Committee on Education
and Labor

Permanent Select Committee
on Intelligence

Committee on Natural Resources

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EXEC. SECRETARIAT
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WASH, D.C.

The Honorable Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW, Ste S-2524
Washington, D.C. 20210

Dear Assistant Secretary Borzi:

I wanted to thank you for taking the time to meet with me on March 10. I appreciated the opportunity to learn your perspective on the proposed rule on the definition of "fiduciary" and for considering my questions and concerns. In addition, as a sponsor of the Lifetime Income Disclosure Act, I appreciate your strong advocacy for this policy.

I value your and the Department's efforts to produce an updated fiduciary standard that has the employees' best interests in mind. The update to the "regular basis" test, in particular, is a welcome change that provides increased clarity to both advisers and investors. In addition, I am encouraged by the SEC's movement to a reasonable disclosure-based regime for brokers and investment advisers offering products from which they may receive financial benefit. I hope the Department takes similar, reasonable actions in enhancing disclosures to plan sponsors and participants that do not, for example, force advisers to disclose that their interests are "adverse" to those of their clients.

As we discussed, my interest with regard to the rule change stems from my general view that the more sound, professional investment advice available to employees, the better. This general principle should be central to any regulations that define what actions constitute a "fiduciary."

I remain concerned that under the proposed rule service providers may be considered fiduciaries in situations that will make it extremely difficult for them to provide important educational information and investment tools to participants. I also am concerned that should providers continue to offer investment education to participants, they may do so at added costs that would likely be passed along to participants. Ultimately, either of these scenarios may lead to less access to financial education and investment advice for participants and less saving for retirement – an undesirable outcome for all interested parties.

I share the concerns of various participants in EBSA's public hearings with regard to the proposed rule's application to Individual Retirement Accounts (IRAs) – especially the lack of cost analysis of the proposed changes. Specifically, I believe the application of

the rule to IRAs will constrain the ability of service providers who have strong relationships with their clients to discuss appropriate options for their IRAs.

My concerns aside, I appreciate the Department's openness to public comment, and I was encouraged by your remarks during our meeting of the substantial interaction with the SEC. I believe that meaningful collaboration with the SEC's efforts on the substance and timing of the final rule will benefit investors and advisers.

Thank you for your time and thoughtful consideration of my concerns. I look forward to hearing from you with regard to the points that I raised. If I can be of any assistance to you on this, lifetime income disclosure, or any other issues, do not hesitate to contact me.

Sincerely,

Rush Holt

RUSH HOLT
Member of Congress

RH/kc

SIMS

Congressman Rush Holt

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Message:

Letter from Rep. Holt.

Number of pages to follow: 2

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