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## Congress of the United States House of Representatives

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September 9, 2015

The Honorable Thomas Perez  
Secretary  
U.S. Department of Labor  
Frances Perkins Building  
200 Constitution Avenue  
Washington, DC 20210

Dear Secretary Perez,

Thank you for the opportunity to comment on the Department of Labor's expansive proposed rule changing the definition of a "fiduciary" under the Employee Retirement Income Security Act (ERISA). I commend the Department's efforts ensuring Colorado workers have confidence that their retirement savings are secure.

The proposed rule comes at a time when there is intense focus on retirement security. I constantly hear from my constituents who are concerned about their ability to save for retirement. At a recent town-hall I hosted in my district, 18 percent of my constituents responded that saving for retirement is the most important issue confronting their household.

I appreciate the DOL's willingness to engage with stakeholders and address the concerns that have been raised. I encourage the Department to continue working with stakeholders to ensure the final rule incorporates the meaningful input received during the public comment process as well as the public hearings. At the end of the day, Coloradans deserve a rule that is practical, digestible and effective.

Our retirement system has the benefit of offering Americans a range of product choices and retirement vehicles. The advice and guidance Americans receive from financial professionals is very important to help them navigate these choices. One of the unintended consequences of the rule is that it could lead to a decrease in affordable investment advice, products and services.

For example, I am concerned about the impact of the rule on guaranteed lifetime income products. Many families and retirees have turned to annuities to protect against the risk of outliving their incomes. Consumers should continue to have access to annuities and informed advice about annuity products.

Today, many workers who change jobs seek guidance from financial advisors about what to do with their 401(k) balances. Financial advisors have the expertise to work with savers to outline their options including whether to stay in their current plan, roll into a new workplace plan, cash out or create a new IRA. There is concern that without advice, savers might choose to cash out

or opt for “safe” investment options with poor returns. Americans who do not seek guidance from a financial advisor are more likely to cash out which can result in taxes and penalties exacerbating retirement account deficiencies.

As a proponent of a harmonized fiduciary standard for broker-dealers and investment advisers under Section 913 in the Dodd-Frank Act, I am concerned the DOL’s new rule will differ significantly from the SEC’s approach under the Investment Advisers Act of 1940. Congress was very clear, that “the receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard...” and that the sale of proprietary products shall not be considered a violation of the new fiduciary standard. While the SEC has yet to propose a new fiduciary standard for providing retail investment advice, having two standards in the marketplace only risks complicating and confusing investors.

The rule should not disrupt core business models, be biased against commission-based products, or eliminate the sale of proprietary products or services offered by a financial professional’s company. I believe companies should have the ability for their expert trained agents to sell their proprietary products. The rule should not prohibit companies from paying their advisors commissions for selling their own proprietary products.

As the Department prepares the accompanying disclosures, it will be important to ensure both new and existing investors receive clear and concise disclosures regarding their investment options. In fact, analysis conducted on behalf of DOL concludes that while disclosures are important “the longer, more detailed disclosure documents have not been effective at helping consumers make informed choices.” Research cited “indicates that disclosure alone, even simplified disclosure, may not be effective at improving financial decision making.”<sup>1</sup>

Finally, the Department should provide stakeholders and savers a substantial amount of time to understand, comply and adjust to the changes. These significant changes will require new compliance regimes, contracts and disclosures to be developed and implemented. Financial advisors and professionals will need ample to time to be trained and educated on the new rule. Given existing client relationships will be affected once the rule goes final, there are legitimate operational concerns about how investors will proceed with receiving advice in the future.

I appreciate the DOL’s goals to help my constituents secure a comfortable retirement. I look forward to working with the Department as they finalize the rulemaking.

Regards,



Ed Perlmutter  
Member of Congress

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<sup>1</sup> “Effective Disclosures in Financial Decision making.” Angela Hung, Min Gong and Jeremy Burke. RAND Labor and Population. Prepared for Department of Labor. July 2015