

United States Senate

WASHINGTON, DC 20510

September 23, 2015

The Honorable Thomas Perez
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Perez:

We were disappointed to hear that the Department of Labor has apparently declined to withdraw or re-propose its proposed new definition of a fiduciary rule.

As you are no doubt aware, under the Administrative Procedure Act, any decision on whether to re-propose must be made based on the record and public input. However, we understand that in an August 7th letter – prior to public hearings and the second comment period and thus before the record reflected material amounts of public input – you announced your decision not to re-propose. Furthermore, we understand DOL officials have also announced that the next version of the rule will be “materially” different. This set of facts is not only inconsistent with the Administrative Procedure Act, it is also troubling from two angles.

First, according to the practitioners in the retirement field, the rule is so rife with unintended consequences that significant material changes are necessary if the rule has any chance of being fixed. Secondly, as we trust that you intend to fulfill your many promises to have an “open process” aimed at “getting it right”, you will no doubt be made aware of these many shortcomings the public has identified and the need for material changes to the rule.

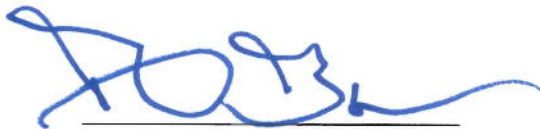
These facts lead to the dilemma before your Department. If you haven’t made material changes, then the public’s viewpoint will not have been fully considered and we will get a flawed rule. However, if you have in fact made material changes, those changes could well be significant enough to trigger a need to re-propose under the Administrative Procedure Act in order to give the public the ability to comment on a materially different set of rules. Yet you appear to have pre-judged the issue of whether to re-propose.

We understand and share your interest in protecting workers, but we hope you listen and respond to groups such as the National Black Chamber of Commerce

who have explained with great wisdom how this rule will lead to lost access to retirement planning help for middle- and lower-income families. The DOL's proposed regulations risk hurting the very small businesses and workers they are intended to protect. We urge you to change course in a manner that adheres to the Administrative Procedure Act.

Thank you for listening and considering these recommendations which are made in the spirit of helping you fulfil your promise to have an open process.

Sincerely,

A handwritten signature in blue ink, appearing to read "R Burr", written over a horizontal line.

Richard Burr
U.S. Senator

A handwritten signature in blue ink, reading "Tom Tillis", written over a horizontal line.

Tom Tillis
U.S. Senator