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United States Senate

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April 19, 2011

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Solis:

We are writing with respect to the Department of Labor's proposed regulation defining the term "fiduciary." We understand the Department has proposed rewriting this regulatory definition to protect individuals from misleading investment advice. Unfortunately, after discussions with several constituents, we fear that the regulation could result in investors receiving far less investment information or experiencing a very significant increase in the cost of such information.

We are particularly concerned about the likely effects of the proposed regulation on investors in individual retirement accounts (IRAs). At a time when many Americans are struggling to ensure themselves of a secure retirement, the proposed change could severely limit access to low-cost investment education and guidance services.

The Department should tread carefully in this important area of regulatory law. Indeed, the Department's own uncertainty regarding the effects of the proposed rule raises serious concerns regarding the proposal. In the preamble to the proposed regulation, the Department states that it is "uncertain regarding whether, and to what extent, service provider costs would increase." The Department also claims to be "uncertain whether the service provider market will shrink because some service providers would view the increased costs and liability exposure associated with ERISA fiduciary status as outweighing the benefit of continuing to service the ERISA plan market."

In light of all of this uncertainty, and our real concern that the proposal could result in less investment education and guidance services for IRA participants, we urge the Department to implement a thorough review of the proposed regulation and the concerns we have raised. This is especially important since the Department did not take the preliminary step of issuing a request for information as is often the case when promulgating a rule of this impact. Such a review should include an examination of the cost, market effects, and investor effects related to the proposed regulation and a detailed analysis of the cost of the proposed regulation with respect to IRAs.

Finally, we urge the Department to repropose the regulation. Reproposing the regulation would ensure that Congress and the retirement plan community can review and comment on any changes to the proposed regulation. Reproposing the regulation would also allow the Department to work in a more coordinated fashion with the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Treasury Department, all of which have responsibilities related to the Department of Labor's proposed regulation. Further, in recent days, Department officials have publicly described the need for regulatory and/or class exemptions. Such exemptions should be published with the reproposed rule.

In closing, we harbor sincere concerns about the effect of this proposed regulation on investors nationwide. The regulation should not be finalized until these concerns have been thoroughly reviewed. Thank you for your consideration of this letter. We look forward to a continued dialogue on these critical issues.

Sincerely,

U.S. Senator Richard Burr

U.S. Senator Saxby Chambliss

U.S. Senator Johnny Isakson