Congress of the United States
Washington, DC 20515

May 10, 2011

RECEIVED
2011 MAY 11 PM 4:21
EXEC. SECRETARIAT
OSEC-DOL
DEPT. OF LABOR
WASH D.C. 20210
604693

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" under the Employee Retirement Income Security Act (ERISA). We understand the Department's desire to revisit this regulatory definition after 35 years and share the Department's perspective that it is critical to protect individuals from misleading investment advice.

It is precisely the importance of this regulatory project that is causing us to write. We would like to emphasize how vital we think it is that this project be completed in a thorough way that fully takes into account all perspectives. In the absence of a complete review of all relevant factors, we believe that the regulation could result in investors, especially middle-income investors, receiving far less investment information.

We applaud the Department for extending the comment period and holding a hearing. But the Department's own uncertainty regarding the effects of the proposed rule raises our concern. In the preamble to the proposed regulation, the Department states:

- "The Department's estimates of the effects of this proposed rule are subject to uncertainty . . . It is possible that this rule could have a large market impact."
- "For example, the Department is uncertain regarding whether, and to what extent, service provider costs would increase . . . .The Department is also 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."
- "The Department . . . tentatively concludes that the proposed regulation's benefits would outweigh its costs."
- "The Department is unable to estimate the number of small service providers that would be affected by the proposal."
- "The Department also is unable to estimate the increased business costs small entities would incur if they were determined to be fiduciaries under the proposal."
- "It is possible that some small service providers may find that the increased costs associated with ERISA fiduciary status outweigh the benefit of continuing to service the ERISA plan market; however, the Department does not have sufficient information to determine the extent to which this will occur."

As you likely have heard, much of the concern over the proposed regulations lies in the possible unintended consequences on the marketplace. For example, some have argued the proposal could restrict access by middle-income individuals to investment information with respect to plans and IRAs and that it could eliminate pension plans' ability to use swaps to manage enormous risks that can affect the plan sponsor's financial health. Further, given the SEC and CFTC's work on a related fiduciary guidance project, questions have been raised about how effectively the various agencies are coordinating their efforts to provide clarity to investors.

In light of the uncertainty and the significant amount of concern expressed in the comments and at the hearing, we urge the Department to take the time necessary to do a thorough review of the proposed regulation and the issues and concerns that have been raised. This is especially important since the Department did not take the preliminary step of issuing a request for information with respect to this issue as it has done with respect to numerous other regulations.

Specifically, the Department should study the cost and market effects related to the proposed regulation. This should include an analysis of the cost of the proposed regulation with respect to IRAs, an analysis which was not done in connection with the proposed regulation. Based on the information likely to be learned in these further analyses, if appropriate, we ask the Department to consider reproposing the regulation so that anticipated changes to the regulation can be subject to additional public comment before a rule is finalized.

Thank you for your efforts on behalf of retirement plan participants and IRA owners across America. We look forward to a continued dialogue on these critical issues.

Sincerely,

Jim Matheson

Dan Boren

John Barrow

Leonard Boswell

David Scott

Dennis Cardoza