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Congress of the United States
House of Representatives
Washington, DC 20515

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DEPT. OF LABOR
WASH D.C. 20210

May 26, 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 (DOL's) proposal to redefine "fiduciary" under the Employee Retirement Income Security Act of 1974 ("ERISA"). Upon review of the proposal, we are concerned about its potential impact on access to financial education, investor choice of financial products, and the costs to retirement plan participants.

As you know, the issue of fiduciary standards was explored in depth during the debate of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). As such, it concerns us that while the Securities and Exchange Commission (SEC) is writing its fiduciary rules as mandated by Dodd-Frank, the DOL preemptively proposed its own fiduciary standard. The DOL's proposed rule was released prior to a January 2011 SEC study, which found that maintaining multiple business models, whether advisory fee-based or commission brokerage, was best for investors. We are concerned that the DOL proposal would negatively impact the viability of commission-based brokerage accounts, which is what the vast majority of middle class workers use to save for their retirement today.

As the DOL's preamble to the proposed regulation states, "it is possible that this rule could have a large market impact" and it is uncertain "whether, and to what extent, service provider costs would increase". Taking this into consideration, we urge the Department to carefully examine the practical impacts of the proposal, particularly any increased costs to investors with Individual Retirement Accounts (IRAs). It seems the proposed rule would trigger fiduciary duty for brokers in nearly every investment-related conversation or interaction with clients. We are concerned that this new application of an ERISA fiduciary standard for IRA plans will lead to reduced access to professional investment advice for the average investor, who will then face fewer choices and higher costs. It could have the unintended consequence of hurting the small investors the rule seeks to protect.

Given these widely shared concerns, we ask that you consider allowing for a more extensive period of study to determine the best course for ERISA and IRA accounts, market participants and service providers through a re-proposed rule. We also ask that the Department finalize any proposed prohibited transaction exemptions at the same time any new fiduciary definition is finalized so that market participants and service providers can best plan for the new landscape.

We share your goal of protecting investors, retirees and their families in this increasingly complex financial marketplace, and look forward to continued dialogue on this issue so that we may ensure a healthy financial future for our country. Thank you for your consideration of our request.

Sincerely,

PETER KING
Member of Congress

STEVE ISRAEL
Member of Congress