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# United States Senate

WASHINGTON, DC 20510

June 13, 2011

The Honorable Hilda Solis  
United States Department of Labor  
200 Constitution Avenue  
Washington, DC 20210

Re: **Definition of the Term Fiduciary**

Dear Secretary Solis:

As you know, the new definition of "Fiduciary" proposed by the Department of Labor (DoL) raised a number of concerns from various stakeholder groups. One particular area of concern is the impact on individual retirement arrangements (IRAs).

I applaud the DoL's desire to increase protections for investors in Individual Retirement Accounts. However, any new consumer protection measures must not be so stringent as to make the IRA market impossible to serve.

Assistant Secretary Phyllis Borzi of the Employee Benefit Security Administration, which proposed the rule, has emphasized that the proposed changes to the definition of "fiduciary" would be the first since the original definition was set in 1975 following the passage of the Employee Retirement Income Security Act of 1974 (ERISA). Since that time, the fiduciary standard set under ERISA has not been applied to brokerages serving IRA clients. Instead, those brokerages have been regulated under the Securities Act of 1934, regulation which covers all of their clients, not only those with IRAs.

The current rules on IRAs, which have been in place for over three decades, have permitted brokerages to serve clients with a business model that includes such practices as charging for commissions, and maintaining an "inventory" of securities to sell to clients. While these elements of the brokerage business model are not without controversy, they are generally understood and accepted. Indeed, DoL has made it clear to my staff that they have no intention of prohibiting brokerages from charging commissions or selling out of inventory when they serve IRA clients.

However, commissions and inventory sales would be prohibited under a hard fiduciary standard. In the absence of additional exemptions from DoL's list of prohibited transactions, brokerages say that they will be forced either to suspend service to their IRA clients or to alter the fee structures they charge clients in such a way that will price many IRA investors out of the market for investment advice.

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2011 JUN 14 PM 2:14  
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I understand that DoL is working on new exemptions to the list of prohibited transactions. However, bringing brokerages under fiduciary regulation would represent an enormous change for the industry. If the transition is not handled correctly, DoL may deprive middle income IRA investors from access to investment advice, despite the DoL's stated intentions.

As such, I would encourage you to delay the introduction of the interim final rule until the issue of exemptions to prohibited transactions is resolved. If this cannot be accomplished, I would encourage you to consider re-proposing the new fiduciary rule, or excluding IRAs from the new rule altogether and dealing with them separately.

I look forward to further communication with you and Assistant Secretary Borzi on this issue.

Sincerely,

A handwritten signature in black ink that reads "Claire McCaskill". The signature is written in a cursive, flowing style with a large initial "C" and "M".

Claire McCaskill  
United States Senator