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Congress of the United States
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COMMITTEE ON
FINANCIAL SERVICES
FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT

DOMESTIC MONETARY POLICY
AND TECHNOLOGY

June 15, 2011

The Honorable Phyllis Borzi
Assistant Secretary, Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave, NW
Washington, D.C. 20210

Dear Assistant Secretary Borzi:

Thank you for taking time to meet with Representative Clay and me earlier this month to discuss the U.S. Department of Labor's (Department) proposed rule on the definition of the term "fiduciary." I very much value the conversation and your overall objective in forming this rule. I also appreciate your offer to meet with interested private sector parties. I believe it is critical that you hear directly from both the consumers and the companies that stand to be directly impacted by this rule.

I agree that, as in every profession, the investment advisor field is not without its share of bad actors. While I share your perspective that it is important to protect individuals and small businesses from malicious investment guidance, I remain concerned that your proposed rule is unnecessarily broad and will result in many unintended consequences that will negatively impact legitimate investment advisors and consumers alike. First and foremost, I find it troubling that the Department is in the process of promulgating a rule that will have great bearing on an entire industry without first having empirical data quantifying the prevalence of the issue at hand. Without proof that this problem is indeed widespread, as you maintain, it is irresponsible to continue on the current course.

To address your concern that little viable information has been presented from industry I have enclosed a copy of the Oliver Wyman report, conducted on behalf of twelve retail investment services firms and published this April. This report, sent to your Office of Regulations and Interpretations on April 12, 2011, shows the effects of the Department's proposed rule on both the investment services industry and small investors. My colleagues and I continue to hear from investment professionals that the implicit costs associated with this rule will force many of them out of the marketplace, particularly those in rural and urban areas who represent small dollar investors. I urge you to review this report in its entirety and take into consideration its findings and other potential implications that the Department's actions will have on legitimate investment advisors and their clients across the nation.

Lastly, I have some apprehension over your comments that the Department is likely to use its broad statutory authority to issue exemptions on a case-by-case basis after the rule is finalized. It is worrisome that the Department is already discussing the availability of and

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probable need for exemptions for a rule that has yet to be finalized. Additionally, I am afraid that the current timeline will not allow for a proper review of potential new prohibitive transaction exemptions.

Given the many outstanding questions that surround this rule I again urge you to consider a full re-proposal. This will give the Department the time necessary to take into consideration the broad implications of the proposal and promulgate a rule that is an appropriate response to the problem at hand.

Again, I appreciate your time and look forward to a continuing dialogue on this important issue. Please do not hesitate to contact me if I can provide additional information or help to facilitate additional conversations with industry representatives.

Sincerely,

Blaine Luetkemeyer
Member of Congress

cc: The Honorable Hilda Solis
Secretary of Labor

The Honorable Jacob Lew
Director, Office of Management and Budget