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May 5, 2010

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Independence Avenue, SW
Room S-2018
Washington, DC 20210

The Honorable Phyllis Borzi
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Independence Avenue, SW
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Dear Madam Secretaries:

We would like to take this opportunity to comment on the Department's proposed rule on Investment Advice to Participants and Beneficiaries.

First and foremost, we want to congratulate the Department for withdrawing the ill-advised class exemption for investment advice that would have permitted investment advisors to offer self-interested advice to participants and beneficiaries and for issuing a proposed rule that closely follows the statutory provisions on investment advice included in the Pension Protection Act of 2006 (PPA). As you know, proposals to greatly expand the amount and type of investment advice that may be provided to millions of workers through their 401(k) and similar pension plans was one of the most contested issues debated during consideration of the PPA. The final law provided two limited expansions for the provision of investment advice – advice provided by computer models and subject to level fee models; both are subject to specified criteria for their usage in order to assure participants and beneficiaries that they are receiving unbiased recommendations on how to invest their retirement assets. We are particularly pleased that the Department's proposed rule reinforces these statutory protections particularly with respect to:

- disclosure of all fee and other compensation of the fiduciary advisor;
- disclosure of the fiduciary status of the advisor;
- application to the advisor's affiliates;
- express authorization required by the plan fiduciary;
- clear and conspicuous disclosure in an understandable manner.

We hope the Department will continue to perfect this and related rules and would like to identify a few areas in which we believe the proposed rule should be enhanced:

- 1) The proposed rule permits computer based investment advice to exclude investment options that consist of target date retirement funds, annuities and employer stock. These exemptions seem to significantly diminish the usefulness of any computer model advice. Approximately 75% of all 401k plans offer target date retirement investment options and they are the fastest growing retirement investment product. Any computer model that excluded these funds would either provide imperfect advice to a participant or would require the participant to conduct separate research on the excluded options. Neither alternative serves to assist participants and beneficiaries in their retirement investment decision-making process.
- 2) The proposed rule is not completely clear on the types of investment option information that a fiduciary advisor must provide to a participant or beneficiary and when and how it must provide such information. The Department may intend to specify such in its service provider disclosure rules, but the Department should be clear how the two rules interact. For example, an investment advisor should be in the best position to explain the expense ratios or similar investment management fees of an investment option, but the proposed rule appears to permit the advisor to direct the participant to other sources.
- 3) The proposed rule permits electronic disclosure of the required notices of the terms of the advice subject to the Department's rules on electronic disclosure. We understand that the Department has been reviewing its electronic disclosure rules and opinions and the Department should consider special electronic transmission rules for investment advice. A growing number of studies have found that internet users do not read or take seriously internet provided disclosures and for such a sensitive and important financial disclosure, electronic transmission may be meaningless disclosure to participants and beneficiaries. Similarly, the proposed rule contains a model disclosure but does not highlight or place prominently its recommendations that investment advice and information about the advice be carefully reviewed.

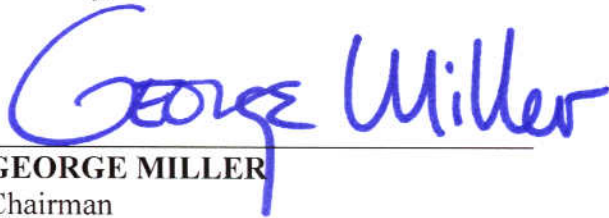
Finally, the Department's proposed rule makes clear that it is limited to the investment advice provisions contained in PPA. However, the Department has adopted other rules and opinions on investment advice that should be reconsidered in light of the PPA rules. For example, the

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Department's opinion known as SunAmerica¹ does not require consideration of fees or all plan investment options and thus, should be revisited to at least include the protections the Department includes in this rule. Our Subcommittee on Health, Employment, Labor and Pensions held a hearing on investment advice last year in which these issues were discussed, and we hope the Department will take steps to make sure that appropriate protections are in place.

Ultimately, the success or failure of these rules depends on the Department's efforts to monitor and enforce compliance with its rules on protections for participants and beneficiaries offered investment advice. With the retirement security of millions of workers at stake, we will work with the Department to make sure employers and financial service providers take seriously their legal responsibility to act prudently and solely in the interests of workers' with respect to these funds.

Sincerely,



GEORGE MILLER
Chairman



ROBERT E. ANDREWS
Chairman
Health, Employment, Labor, and Pensions
Subcommittee

¹ See DOL Advisory Opinion 2001-09A (December 14, 2001).