

Congress of the United States
Washington, DC 20515

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July 29, 2011

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

EXEC. SEC. ASSISTANT
SEC. OF DOL
DEPT. OF LABOR
WASH. D.C. 20210

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Dear Secretary Solis,

We are writing to express our concern over the Department of Labor's October 22, 2010 proposed rule, "Definition of the Term Fiduciary." The proposed rule alters the criteria of who is to be considered a "fiduciary" under the Employee Retirement Income Security Act (ERISA). The rule would significantly change the regulatory and legal environment for those involved in managing and advising retirement plans, retirement plan participants, and owners of Individual Retirement Accounts (IRA's).

The Department stated in the proposed rule that it believes "...amending the current regulation to establish additional circumstances where investment advice providers are subject to ERISA's fiduciary responsibilities would better protect the interests of plans and their participants..." However, we feel that the Department's approach to amending the fiduciary definition is misguided.

Specifically, we believe that the Department did not properly take into account the costs that are likely to accrue to individual investors as a result of this rule. This is alarming as it appears that individual investors will pay a significant portion of the tremendous costs that we believe are a likely result of this rule going into effect.

We are particularly concerned about the costs that the rule could impose on individuals who save money through IRA's. IRA's were created in 1974 and have become an important source of retirement security for millions of Americans. Today, 49 million American households have approximately \$4.5 trillion invested in IRA's. Because they do not require minimum contributions, IRA's appeal to savers of all income levels.

The proposed DOL rule would force owners of "brokerage" IRA's to either terminate their relationship with their current provider or convert to "advisory" IRA's in order to access investment services. According to an April 2011 report from Oliver Wyman, IRA investors currently prefer brokerage IRA's to advisory IRA's by a substantial margin. This preference is especially pronounced for accounts with lower balances – the study found that 98% of IRA's with less than \$25,000 were brokerage relationships. By converting to an advisory relationship where an annual asset-based fee would be assessed, the study found that direct costs to IRA owners would increase by anywhere from 75% to 195%. Oliver Wyman also concluded that approximately 7.2 million IRA's would not even qualify for an advisory account because of minimum account levels in the industry. Even if these minimums were relaxed, *IRA owners*

would be left with the unappealing choice of not being able to receive information and guidance from a financial professional, or paying significantly increased costs to receive that advice. This will make saving for retirement even more difficult for savers and investors.

Our nation went through the 2008 economic crisis in part because Americans were not saving and instead living beyond their means. We should not impose additional costs or restrictions on Americans who are doing the responsible thing by putting some of their hard earned income into long term savings accounts. **We request that the Department withdraw and re-propose the regulation.** A re-proposal will help insure that any changes to the fiduciary definition address the concerns raised by hundreds of comments, provide additional opportunity for comment, and provide adequate time for the Department to examine the costs and benefits of this rule in a more thorough fashion. We believe that the concerns we raise here are only a portion of the economic harm that could occur should this rule become final.

Sincerely,


Paul Conroy

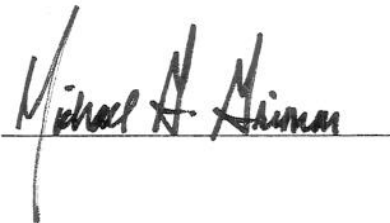

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