Congress of the United States
Washington, DC 20515

July 29, 2015

The Honorable Thomas Perez
Secretary
United States Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Secretary Perez,

We the undersigned Representatives from the state of Illinois are writing in response to the Department of Labor's (DOL) new proposal which expands the definition of fiduciary under the Employee Retirement Income Security Act (ERISA). While the intent of the proposed rule has been described as a way to help middle class Americans save for retirement, this proposal may have the unintended consequence of discouraging financial advisors from providing advice, education, and financial products through an amorphous and complex regulatory process to the market that is most in need of this advice. Furthermore, we believe this is an area where congressional action may be needed to update existing law to clarify agency authority and to address the evolution and current needs of the retirement services marketplace. We want to work constructively with the Department and other interested parties to achieve these goals.

In particular, we believe the following principles should guide the development of any new requirements in this area:

- Consumer choice – Currently there are an array of business models and distribution channels that exist in the retirement savings marketplace. Policymakers should take into account that individuals and small businesses in some cases are more comfortable with an advisor that they know and trust rather than a telephone representative or a website advising them on their retirement needs. In other cases, individuals might want to rely on technology or a telephone representative rather than an advisor. Nevertheless, an investor saving for retirement should have an array of choices and products.

- Business model and product distribution – In addition to consumer choice, we should recognize that there is an array of product options that are developed by securities firms, insurance companies, and other organizations. We should work toward a solution that recognizes that a suite of products utilized for retirement can operate under any exemption provided under law that are clearly defined. Restricting a business model but providing exemptions for others could have negative consequences to the investor and create an unlevel playing field.

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- Access to advisors – We are concerned that restricting access to financial advisors is very problematic. Almost 40 million American households have saved nothing for retirement. We should strive to assist these households through access to advisors and provide clear rules that advisors and their companies can offer training to ensure they are in compliance.

We should also avoid hurting small businesses by imposing new administrative costs; excessive, unnecessary risks; and a new set of complex and conflicting requirements on services that are already subject to extensive regulation and supervision under existing laws that adequately protect investors and consumers. The Proposal, to the contrary, will impose significant cost and risks that small businesses are ill-equipped to absorb.

Two particular areas where we would like to work with the Department are: 1) the creation of a seller's exception that includes non-fiduciary selling activity as originally contemplated in DOL's proposal on the same subject in 2010 and has been long recognized by the courts; 2) making clear that the exclusive sale of proprietary products or services should not be viewed as a violation of any "best interests" standard. This would be consistent with the congressional directive of Section 913 of the Dodd-Frank Act. Finally, more coordination must be made with the Securities and Exchange Commission, which has clearer jurisdiction over financial advisors, to ensure that individuals are not subject to duplicative, or perhaps conflicting, regulations coming from two or more agencies.

We believe there is a great opportunity for Congress to work with DOL and others in establishing new standards for the benefit of consumers in retirement services. We encourage the Department to take this path before moving ahead with the proposal.

Sincerely,

Mike Bost
Member of Congress

Rodney Davis
Member of Congress

Robert Dold
Member of Congress

Randy Hultgren
Member of Congress

Adam Kinzinger
Member of Congress

Peter Roskam
Member of Congress

John Shimkus
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