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September 24, 2015

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

Dear Secretary Perez:

I was pleased to be able to talk with you at the White House about the Department of Labor's (DOL) pending rulemaking regarding the fiduciary responsibilities of financial advisors. As promised, I am writing to highlight several concerns that have been expressed to me by a range of advisors and firms serving a variety of clients in my district, which I believe merit careful attention. I appreciate your assurance that the Department will be giving such concerns serious scrutiny before issuing a final rule.

Perhaps the most common concern I have heard, particularly from advisors serving clients of modest income, was that advisors would find it necessary to move toward an up-front, fee-based compensation model, which would have the unintended effect of preventing conversations and advice from ever getting off the ground, particularly for less sophisticated investors or retirement savers of low or moderate income.

More specifically, several aspects of the Best Interest Contract (BIC) Exemption seem problematic. Section II(a) of the proposal requires that an advisor and financial institution enter into a written contract with the retirement investor prior to recommending the purchase or sale of an asset. Many firms and their advisors have interpreted this section to preclude them from even communicating with potential clients unless a contract is signed beforehand. In addition, there is anxiety about the possible administrative burdens associated with the written contract requirement as currently drafted. Although further guidance from the Department might address some of these concerns, I urge you to seriously consider alternative options that could place a legally enforceable commitment on the part of advisors to act in the best interest of their clients while preserving access to investment services.

Small businesses and retirement advisors in North Carolina have also questioned the exclusion of certain employer-sponsored retirement plans from the BIC Exemption. Under the existing proposal, the exemption only applies to non-participant-directed ERISA plans with fewer than 100 participants. As you know, this distinction would exclude participant-directed 401(k) plans offered by many small businesses. If DOL believes the BIC Exemption could be expanded to cover 401(k) and other types of plans without jeopardizing the core investor protections envisioned in the proposal, I would encourage you to adopt such a change.

Several financial and insurance professionals in my district have also raised concerns that, in order to satisfy the requirements of the BIC Exemption, the advisor must provide advice "without regard to the financial or other interest of the advisor, financial institution, any affiliate or other party." They have interpreted this language to mean that financial professionals must have *no* interest in a transaction, rather than simply make recommendations that are in the client's best interest. As a result, these advisors warn they would be effectively prohibited from selling proprietary products or receiving various forms of differential compensation, such as commissions. I believe additional clarification from DOL could prove helpful in alleviating these concerns.

The proposed rule also changes existing regulations regarding investment education. Although discussions about the mix of assets a person should have based on age, income, or other qualities does not rise to the level of fiduciary advice under the proposal, any discussion that references specific investments or proprietary products would trigger a fiduciary duty. Advisors have concerns that investment education without specific examples would largely be an exercise in investment theory, leaving clients less informed. I encourage DOL to revisit this part of the proposal and consider whether existing or additional disclosure requirements in this context could protect investors while facilitating continued access to investment education.

Finally, many firms and advisors have expressed considerable apprehension about complying with a final rule within eight months of publication. These firms believe they may need as many as two or three years to come into full compliance with the DOL proposal, depending on its final form. If the Department cannot reasonably accommodate a delay in the rule's applicability date, I would encourage you to explore the feasibility of establishing a period of limited or probationary enforcement, contingent upon a firm's good faith efforts to comply with the new rule. This would allow for the Department to move forward with implementing important investor protections while affording some measure of certainty to firms and advisors.

Again, thank you for the opportunity to share these concerns as DOL works to finalize the fiduciary rule. I appreciate your careful consideration of these issues in the weeks and months ahead. Should you have any questions or concerns, please do not hesitate to let me know or contact Sean Maxwell (Sean.Maxwell@mail.house.gov or 202-225-1784) of my staff.

Sincerely,

David Price

DAVID E. PRICE
Member of Congress