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September 18, 2015

The Honorable Thomas Perez
Secretary
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

Re: Proposed Conflicts of Interest Rule RIN 1210-AB32

Dear Secretary Perez,

A few weeks ago, I joined my colleagues, Representatives Robert C. "Bobby" Scott and Maxine Waters in expressing my strong support for the Department of Labor's (the "Department") proposal to update and re-define the definition of "fiduciary" under the Employment Retirement Income Security Act of 1974 ("ERISA"). While the retirement planning landscape has changed significantly since 1975, when the definition of "fiduciary" was last updated, the standard of conduct for investment advisors has lagged behind. As increasing numbers of Americans now manage their own retirement savings and rely on the expert advice of investment advisors for their retirement security, it is vital that Americans have access to affordable and un-conflicted retirement advice.

As a founder of the Congressional Financial and Economic Literacy Caucus – and as the only member of both the Committees on Financial Services and House Education & Workforce, which has jurisdiction over ERISA, I believe the Department's proposal recognizes the need for an updated standard and is a welcome step in the right direction. As one of the Rio Grande Valley's representatives in the U.S. House of Representatives, where the need to expand access to resources and financial literacy is evident and widespread, I applaud the Department's commitment to crafting a universal best interest standard for all retirement advice, as well as in the responsive, open and inclusive manner in which the Department has carried out its efforts. There is no doubt that we share the same goal of increasing access to and the availability of cost-effective and un-conflicted retirement investment advice that is in the best interest of the consumer. While I reiterate my unwavering support for the Department's efforts today, I also write to share some of my suggestions with the rule as proposed. I trust the Department will work diligently to review and address comments in response to the proposal as it works to finalize and perfect the rule.

Investment Education

The Department was wise to include an *Investment Education Carve-Out* providing investment advisors with flexibility in distributing educational information to clients and potential investors without such information constituting "investment advice". At a time when nearly half of all working-age households own no retirement account assets,[1] and 30 percent of all households do not have a savings account,[2] removing barriers to saving is a critical first step to increasing financial security for Americans. A central stumbling block for many Americans is their lack of financial literacy. Critically important financial tools such as tax-preferred retirement accounts and fundamental investment product options such as securities, equities, bonds and mutual funds can be overly confusing.

As more Americans nearing retirement age face the prospect of deep financial insecurity in their later years, we need to expand financial literacy by providing Americans with easy access to financial information from their trusted investment advisors. As the proposal currently stands, the act of describing particular financial products and features, and how said features could meet the needs of the investor may trigger contract requirements. I am concerned that by requiring a contract to be signed prior to any investment decision being made, the rule could have the effect of suppressing accurate information and good advice in an effort to avoid running afoul of the rule's prescriptions.

I suggest the Department allow for some flexibility with respect to the timing of an advice conversation proceeding to the mention of investment products. Advisors and consumers must be able to discuss together investment options prior to the point at which a recommendation is made and a specific choice is contemplated. The contract should be executable once a full review of the investor's circumstances, goals, objectives and financial options have been discussed and a specific recommendation is to be made as to a course of action.

Compensation Models

I strongly commend the Department adopting a flexible, principle-based approach, rather than a prescriptive approach. There is much concern that the current proposal favors a fee-based or investment advisory model rather than the more widespread commission-based / brokerage model currently in use. The Department should not favor or dictate particular business models that may not be in the best interest of the investors, especially small savers. There is no one-size-fits-all compensation model that is best suited to all investors. While investment advisory models may be in best interest of some investors, their up-front fee structure may prove to be more costly for others.

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[1] Rhee, Nari PhD, "The Retirement Savings Crisis: Is it Worse Than We Think?", National Institute on Retirement Security, 2013.

[2] 2013 FDIC National Survey of Unbanked and Underbanked Households.

The strength in the Department's proposal is its flexible approach that allows for a wide variety of business models. I suggest the Department clarify and strengthen its guidance to ensure that the rule is not interpreted to create a bias between commission-based and fee-based accounts provided that investment advisors act in the investor's best interest.

Contract Disclosure Requirements

The Best Contract Interest Exemption (BICE) is a flexible and innovative approach taken by the Department, and I praise its ingenuity. However, I am concerned the BICE provides for substantial and duplicative disclosure requirements that could prove to be quite difficult in terms of compliance. Requiring advisors to provide all direct and indirect compensation for recommended investments as well as costs for competing alternative products *and* projections for all of these costs at one-, five- and ten-year intervals may prove quite burdensome and impractical. Providing such voluminous information and projections of this sort would be very difficult due to the varying compensation schemes for the thousands of different investments. I suggest the Department explore simplifying the disclosure requirements while ensuring investors are provided with the information necessary to make informed decisions.

Small Business

Small businesses make up 99 percent of all U.S. employers and are the lifeblood of my district's and our national economy. It is of paramount importance that in moving forward with the proposal, the Department ensures the ability of small businesses to provide retirement savings opportunities to their employees. The proposal provides a helpful *Seller's Exemption Carve-Out* but limits its applications to plans with over 100 participants. I believe the Department should carefully monitor the effect of the rule on the ability of small businesses to provide retirement plans which do not meet the criteria for exemption under the *Sellers's Carve-Out* in order to ensure the continued availability of, and growth of small-business sponsored retirement plans.

I thank and congratulate you as well as the Department for its leadership in working to ensure investment advisors are held to the highest standard when acting in the best interest of their clients. The proposed rule is a long overdue update. I look forward in working with you in finalizing this important milestone.

Sincerely,

Rubén Hinojosa

Rubén E. Hinojosa
Member of Congress