



State of New Mexico

Susana Martinez
Governor

August 19, 2015

The Honorable Thomas E. Perez
Secretary of Labor
Department of Labor
200 Constitution Ave., NW
Washington, D.C. 20210

Dear Secretary Perez,

I am writing you today to express my concerns with the recently released Department of Labor (DOL) proposal to change the definition of fiduciary investment advice under the Employee Retirement Income Security Act of 1974 (ERISA), and to encourage you to make the appropriate changes necessary to protect the financial savings of all New Mexicans.

Like many states, New Mexico citizens often face challenges when saving for retirement. We are ranked 42nd in the nation when it comes to median household income, and more than 60 percent of New Mexicans report not having enough "rainy day" savings for a three-month emergency fund. These numbers indicate that our residents have a great need for education and guidance that prepare them for a stable retirement. Ensuring that our families are able to access the tools and resources they need to make adequate financial decisions to fund their future is critical to the success of our region.

I appreciate the DOL's goal to improve investor protection. However, the proposal in its current form will hurt New Mexicans' ability to plan for their future. For example, the proposal's new Best Interest Contract (BIC) exemption should be modified so that it applies to small plans. The BIC excludes sponsors of small, participant-directed plans, meaning these sponsors cannot request assistance from advisers or record-keepers when structuring plan line-ups. Further, the proposed rule will limit our small businesses from receiving the help they need to establish and maintain a retirement plan, resulting in many plan sponsors either not creating plans or terminating existing plans. This would hinder many New Mexicans in their efforts to save for a secure future.

I am also concerned that the proposed rule will limit the access that individual investors currently have to affordable financial planning services and resources. Under the rule's redefinition of "investment advice," job changers will lose access to much of the critical education they rely on today. Employees change jobs several times over the course of their

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working lives. We have seen data indicating that investors who receive personalized assistance and coaching from a financial professional when they change jobs are three times less likely to cash out from their retirement savings plan. The proposed rule could potentially hurt investors by increasing the likelihood that they take premature distributions from their retirement savings, subjecting individuals to severe penalties, taxes and, ultimately, decreased retirement savings.

In addition, permissible investment education is significantly scaled back under the proposal. Under the proposed rule, the critical step of translating general investment education and guidance into relevant examples of specific funds would be considered prohibited investment advice unless an adviser is able to meet the BIC's burdensome conditions and disclosure requirements. A general discussion of asset allocation without the ability to review examples of funds that fit within the asset classes will be of little help to most individuals, leaving them more likely to make inappropriate investment choices.

As Governor, my primary concern is that all New Mexicans, especially those who fall below the median income threshold, are provided opportunities to save for their futures or for their small business futures. While I appreciate the intention to provide enhanced protections for those saving for retirement, the proposed language would hurt the same individuals for whom this proposal is intended to protect—particularly lower-and-middle income individuals who may find that they can no longer afford the investment help they need.

I thank you for your consideration and review of my concerns as they relate to New Mexicans who are saving for retirement and the small business owners trying to do right by their employees. The final rule must enable financial service providers to continue educating New Mexicans on investments and savings for both individuals and small businesses. I have confidence that we can work together to encourage more individuals to save responsibly in an easy-to-understand approach.

Sincerely,



Susana Martinez
Governor