Congress of the United States
Washington, DC 20515

September 24, 2015

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Perez,

We write to comment on the Department of Labor's (the Department) April 14, 2015 proposed rule, RIN 1210-AB32, that updates the definition of a "fiduciary" under the Employee Retirement Income Security Act (ERISA) of 1974. We applaud the Department for taking action to establish a best interest standard that will protect millions of American retirement savers.

The ability of low and middle income Americans to access quality, affordable investment advice is critical to empowering middle class families, reducing wealth inequality, and achieving a secure retirement. As such, it is essential that retirement savers receive advice that is in their best interest. We believe that the proposed rule is an important step towards achieving these goals, and we strongly support the Department's efforts to protect the retirement security of American families. However, after consulting with a wide range of constituent stakeholders, we believe the Department can improve and clarify elements of the proposed rule.

First, while the final rule will impose a fiduciary duty on advice provided to individual 401K plan participants, requiring advisers to go back and enter into a contractual relationship with millions of current 401K participants is unnecessary and onerous. We are concerned that delays or confusion over the contractual status of current participants may inadvertently result in more retirement savers cashing out their 401Ks when transitioning employment. The final rule should make clear that advisers owe a fiduciary duty to current plan participants while simultaneously making a contract requirement accommodation for current 401K plan participants. In addition, we urge the Department to continue to work with stakeholders to reduce the rule's administrative burden by simplifying the contracting process for new clients. A streamlined, legally enforceable contract will go far in ensuring that the best interest standard is applied effectively.

Second, we are concerned that many financial institutions have expressed confusion over which activities and business models will be acceptable under the final rule. For example, is commission-based compensation allowed, do the disclosure provisions require advisers to forecast investment performance, can education include reference to specific investments, and is advice to small businesses exempt? Resolving these issues is essential to ensuring the successful implementation of the final rule, and we hope the Department will provide clear guidance on these and other issues raised by the stakeholder community.

Finally, due to the nature and complexity of issues the rule addresses, we believe that it would be appropriate for the Department to consider incorporating a provision that temporarily limits the liability of advisers who are attempting to comply with the final rule in good faith. This provision could be limited to a reasonable period of time following the issuance of the final rule and should immunize advisers acting in good faith from liability under the rule while they are transitioning their businesses to the best interest standard.

We strongly support the Department's goal of ensuring that financial advisers act in the best interests of their clients, and we urge the Department to carefully consider the concerns raised in stakeholder comments.

Sincerely,

Katherine Clark
Member of Congress

Niki Tsongas
Member of Congress