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DEPT. OF LABOR  
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May 16, 2011

Secretary Hilda Solis  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Dear Secretary Solis,

I am writing with respect to the Department of Labor (DOL) proposal to redefine a "fiduciary" under Employee Retirement Income Security Act of 1974 (ERISA). I share your Department's view that it is critical to protect individuals from misleading advice and predatory practices in the financial markets and I thank you for your continued leadership. However, upon review of the proposal, I am concerned that the proposed rule broadly expands the types of activities constituted as "investment advice," making the provider a fiduciary and the activity a prohibited transaction. As such, I am concerned about the impact of the proposal on investor choice of financial products, access to financial education, and the costs to retirement plan participants.

Specifically, I am concerned that the proposed definition of fiduciary may lead to increased costs to individual retirement account (IRA) holders and limit access to financial advisors. A study by the consulting firm, Oliver Wyman, on the impact on IRAs found that estimated direct costs to IRA holders would likely increase and that small investors would have diminished access to financial advisors. According to their study, low-income investors with the smaller accounts will be most impacted by the proposal. These investors would be required to move their accounts either to self-direct accounts with no advice or guidance, or to higher cost advisory accounts. I strongly urge the Department to carefully examine the practical impacts of the proposal before moving forward with a final ruling.

Additionally, I urge the Department to ensure that this rule is complementary to those proposed by other agencies. The issue of fiduciary standards was explored in depth and actively discussed during the debate of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) and as a result, the Securities and Exchange Commission (SEC) is in the process of writing its fiduciary rules as mandated by Dodd-Frank. I am concerned that the fiduciary standards proposed by the DOL may be in conflict with the SEC's proposal. For instance, the SEC conducted a study, issued in January 2011, which found that maintaining multiple business models, whether advisory fee-based or commission brokerage, was best for investors. I have

concerns that the DOL proposal would negatively impact the viability of commission-based brokerage accounts, which is what the majority of investors choose today.

In closing, I ask that the Department consider re-proposing this rule. A re-proposal would allow for a more concerted effort to determine the best course for ERISA and IRA accounts, market participants, and individual investors. Additionally, a re-proposal would also allow for greater interagency coordination and cooperation on these issues.

I thank you, again, for your hard work to protect American investors. I look forward to continued dialogue on this issue so that we may continue to work towards a strong and stable financial future.

Sincerely,

A handwritten signature in cursive script, appearing to read "Albio Sires".

Albio Sires  
Member of Congress