

MIKE JOHANNIS
NEBRASKA

404 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-4224
(202) 228-0436 FAX
(202) 228-4285 TTY

United States Senate

WASHINGTON, DC 20510

May 20, 2011

COMMITTEES:
AGRICULTURE, NUTRITION AND FORESTRY
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The Honorable Hilda Solis
Secretary
United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Solis:

On October 22, 2010, the Employee Benefits Security Administration (EBSA) within the Department of Labor proposed a rule to amend the definition of "fiduciary" for purposes of the Employee Retirement Income Security Act (ERISA). This proposal would modify the 5-part regulatory test which has been used for over 35 years to define a "fiduciary" with respect to retirement plans.

While I recognize the importance of ensuring that beneficiaries receive unbiased financial advice that protects their interests, I am concerned that this proposed rule may lead to significant unintended consequences for beneficiaries who depend on investment services and employers who provide valuable financial advice.

Specifically, I am concerned that the proposed rule may result in increased costs for investment services, decreased access to financial advice, and negative impacts on small businesses and job creation. Especially during this difficult economic time, it is critical that we do not compromise important financial guidance options for Americans and impose unnecessary burdens on small businesses.

I urge you to direct the ESBA to consider the broad effect of this proposed rule on individuals and businesses. I have also encouraged those who would be affected by this rule to submit their comments. Please appropriately weigh their concerns in order to ensure that this regulation does not harm the very beneficiaries it intends to help.

Thank you for your time and consideration.

Sincerely,



Mike Johanns
United States Senator

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EXEC. SECRETARIAT
DEPT. OF LABOR
WASHINGTON, DC

LINCOLN OFFICE
287 FEDERAL BUILDING
100 CENTENNIAL MALL NORTH
LINCOLN, NE 68508
(402) 478-1400
FAX: (402) 478-0605

OMAHA OFFICE
8900 NICHOLAS STREET
SUITE 325
OMAHA, NE 68114
(402) 758-8981
FAX: (402) 758-8165

KEARNEY OFFICE
4111 FOURTH AVENUE
SUITE 26
KEARNEY, NE 68845
(308) 239-7602
FAX: (308) 235-7473

SCOTTSDUFF OFFICE
115 RAILWAY STREET
SUITE C102
SCOTTSDUFF, NE 68061
(308) 632-6032
FAX: (308) 632-8285