October 7, 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 want to join with the more than 90 members of the House of Representatives who recently wrote to you recognizing the need for the Department of Labor to end conflicts of interest, to ensure that all advisers put the best interests of their clients first, and to better protect tens of millions of Americans saving for retirement. This broad-based support from so many members of Congress demonstrates the importance and urgency of the Department's effort to update its 40 year-old rule that currently allows advisers to put their economic interests above the interests of their clients.

The letter is an acknowledgement that the current loophole is exacerbating the retirement crisis facing this country as tens of millions of Americans struggle, despite years of savings, to set aside enough to live securely and comfortably in retirement. It also highlights the monumental shift in the retirement landscape that has occurred since this original rule was enacted forty years ago. As you know, in 1975, for example, the vast majority of all workers—74 percent—were in large defined benefit plans, with sophisticated fiduciary management staff investing on behalf of all their workers, spreading market risk and reward so that all employees would be assured of a comfortable retirement. But times have changed drastically, and as of 2012, 90 million people—more than two-thirds of workers with retirement plans—had defined contribution plans.

Hardworking Americans are now expected to manage their investments on their own, a challenge that's become more daunting as financial products have become more varied and complex. Most people are turning to brokers and other advisers to help navigate the complex and bewildering financial marketplace, but those brokers and advisers providing essential retirement investment advice are currently allowed by law to put their interests above the interests of their clients saving for retirement. This doesn't mean that everyone giving retirement investment advice is taking advantage of their clients, since many advisers are already acting in their client's best interest. But, because the law does not require them to do so, far too many put their economic interests above their clients' best interests.

As the letter makes clear, this is costing retirement savers billions of dollars every year, and they have no idea this is even happening. That's why your efforts to update this rule are so important, and why so many members of Congress as well as leading labor, retirement, consumer, and investor protection organizations support this commonsense proposal.

As to the particular suggestions in their letter, we are confident that the DOL is already giving them thoughtful consideration. While it may be appropriate to consider minor technical adjustments or clarifications in the rule, we strongly believe that the DOL has adopted the right substantive approach. Any weakening of the rule, which already makes substantial accommodations to industry, would be unwarranted. Of particular concern is the suggestion in the letter that the DOL establish a "safe harbor for good faith implementation." The protections of the rule must not hinge on whether an adviser's breach of the best interest standard was in good faith. Such a gap would invite evasion, a loss of accountability, and continuing damage to American families struggling to save for retirement. Therefore, any safe harbor would have to be of limited duration, based upon the DOL's assessment of how much time market participants really need to understand and implement the rule requirements.

Through the Department's recent unprecedented four-day public hearing, multiple comment periods lasting more than 150 days, and years of input, you have given stakeholders ample opportunity to express their views. The Department has all the information it needs to finalize this rule, and we encourage you to do so as quickly as possible. It is time to end adviser conflicts of interest, to finally require that the best interests of all Americans saving for retirement come first, and to ensure that they can look forward to retiring with dignity and security.

Sincerely,

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