BETTER MARKETS
TRANSPARENCY · ACCOUNTABILITY · OVERSIGHT

July 29, 2014

Dear Senators and Representatives:

Re: Don't Be Fooled By Bogus "Survey" Opposing Department Of Labor's Fiduciary Duty Rule

As you may know, the Department of Labor ("DOL") is working to update and close loopholes in the rules under the Employee Retirement Income Security Act ("ERISA") that relate to fiduciary duties of financial services firms that provide investment advice to retirement plans and plan participants. As currently written, those rules allow financial services firms that investors rely on as trusted advisers to put their own financial interests ahead of the interests of their customers. The DOL's fiduciary duty rule has not been updated for almost 40 years, notwithstanding enormous changes in the types of retirement savings vehicles that are available. The updated rule is expected to provide critically important protections against bad investment advice—protections that millions of Americans investing for retirement expect and deserve.

Regrettably, some in the financial services industry are once again trying to organize congressional opposition to the DOL rulemaking using deceptive claims about the likely impact of the rule. The latest vehicle appears to be a "survey" conducted by financial industry lobbyist Kent Mason and released under the auspices of the Hispanic Chamber of Commerce. It is not, however, a legitimate "survey" or poll; it is propaganda that won't withstand scrutiny.

The "survey" is based on the false premise that the DOL is considering a rule "prohibiting both retirement plan providers and the advisors who sell retirement plans to employers from assisting the employers in the selection and monitoring of the funds in the retirement plan." There is simply no factual basis for the claim that the DOL is considering a rule that would prohibit anyone from assisting employers in connection with the retirement plans they offer to their employees. Even if a fiduciary duty were to apply to retirement plan providers and the advisors who sell retirement plans to employers, plan providers and advisors would still be allowed to assist in the selection and monitoring of the funds in the plan. Any assistance they provided would simply have to be in the best interests of the plans and the plan participants. The fact that the survey questions are based on a false premise renders the survey findings completely irrelevant to the consideration of potential reforms to the ERISA fiduciary duty standard.

The apparent goal of this "survey" is to create groundless fears that the rule will have profoundly negative consequences, thus generating enough controversy around the rule to keep it bottled up indefinitely. If successful, this tactic will perpetuate a system in which those with substantial conflicts of interest are permitted to offer recommendations that do not promote their clients' best interests, even though tens of millions of Americans saving for retirement believe otherwise.

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None of us can know with any certainty what the DOL rule proposal will look like until it is proposed. But we do know that the DOL has promised to put the rule proposal out for public comment along with both an extensive economic analysis and the prohibited transaction amendments that would accompany the rule change. This will allow for a fair assessment of the proposed rule's real-world impact before it is finalized. Some opponents aren't waiting for that, however, fearing perhaps that a factual discussion based on the actual rule proposal would expose the self-serving and false nature of their claims and arguments.

If opponents had factual arguments to use against the DOL rule proposal, presumably they would use them. The fact that opponents are resorting to such obvious deceptions as those in the Hispanic Chamber "survey" suggests that they do not. We urge you not to be swayed by these tactics and to instead encourage the DOL to move forward with rulemaking to protect the millions of Americans who need sound financial advice that serves their best interest to plan for a survivable—let alone decent—retirement. Tens of millions of Americans' retirement security is at stake. Updating a 40 year old rule that has huge loopholes is long overdue and DOL should be encouraged to act as quickly as possible. Then, let the public debate unfold and let real facts speak for themselves.

Sincerely,

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