Congress of the United States
Washington, DC 20515

October 26, 2015

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

Dear Secretary Perez:

We write to express our concerns regarding the U.S. Department of Labor's (DOL) proposed conflicts of interest rule ("Proposed Rule") and to request that you withdraw and re-propose this rulemaking. We are especially concerned about the degree to which the pending rulemaking disproportionately impacts the ability of small businesses to offer retirement plans to their employees and deprives such workers of access to valuable investment advice. At a time when 10,000 Americans are turning 65 every day and fewer people are able to rely on traditional pensions, planning for retirement is more important than ever. However, three key aspects of the Proposed Rule are particularly threatening to the retirement security of millions of Americans employed by small businesses.

First, the arbitrary thresholds for the "seller's exemption" in DOL's Proposed Rule focus the burdens of these regulations squarely on retirement plans available to workers at small businesses. This exemption carves out advisors to retirement plans that have more than 100 participants or are in excess of $100 million in assets. Only advisors working with small plans below these arbitrary thresholds will become fiduciaries forced to operate under the onerous constraints of the Proposed Rule.

At best, participants in small plans will face increased fees, but it is just as likely that the added costs and complexity created by the Proposed Rule will result in fewer small businesses offering retirement savings options to their workers. A recent survey found that almost 30 percent of small businesses with a retirement plan would probably end their plan if the Proposed Rule is finalized. Moreover, almost half of the small businesses surveyed that did not offer a retirement plan for their employees said that the Proposed Rule would deter them from starting one. Since the end of the recession, small businesses have accounted for 60 percent of the net new jobs. DOL should not undermine by regulatory fiat the capacity and willingness of these job creators to provide retirement savings options to their employees.

Second, comments submitted and the testimony received at DOL's recent public hearings on the Proposed Rule demonstrate that it is unclear whether the "best interest contract exemption" for small advisors even applies to the SIMPLE and SEP IRA plans commonly offered by small employers. Congress created SIMPLE and SEP IRAs because many small employers are unable

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to manage the cost and administrative complexity of a traditional 401(k) plan. Today, there are approximately $472 billion in SIMPLE and SEP IRA assets held by more than 9 million households. DOL should not finalize a rulemaking that entails so much uncertainty and anxiety for so many Americans about basic aspects of their retirement savings ranging from the fees they will pay on their accounts to the investment options that will remain available. Even if the "best interest contract exemption" is ultimately deemed to apply to employer-provided SIMPLE and SEP IRAs, as proposed, aspects of this exemption are simply unworkable. For example, the exemption's requirement to project future costs on the basis of an expected reasonable return appears to conflict with current federal and state securities laws prohibiting projections of returns to investors. This is just one of many examples of the lack of coordination and planning among regulators during the development of the Proposed Rule.

Third, the Proposed Rule will unjustifiably discriminate against workers at small businesses by reducing the scope of investment advice they can receive. Under existing DOL interpretive guidance, advisors can provide educational information about asset allocation and examples of investment options that fall within the different categories on a pie chart or graph illustrating a suggested asset allocation. The Proposed Rule prohibits asset allocation models from referencing specific investment options. Thus, employees at small businesses covered by the Proposed Rule will be left to determine for themselves which available investments fit within a recommended asset allocation model. Their peers working for larger employers will not be deprived of such helpful, practical information. We see no basis for depriving employees at small businesses of access to educational services and information that promote informed investing simply because of the size of the employer-provided retirement plan in which they participate.

The DOL's Proposed Rule as currently written will have a negative impact on the retirement savings options available to employees of small businesses. These Americans do not deserve and can ill-afford a prolonged period of uncertainty in relation to their employer-provided retirement savings. It is imperative that we promote public policies that will ensure Americans are receiving the best information and advice possible to achieve financial security at retirement. Accordingly, we urge the Department to withdraw the Proposed Rule and to commit to a process that avoids the arbitrariness, uncertainty, and inadequate analysis embodied in the Proposed Rule. Thank you for your timely consideration of this matter. We look forward to your response.

Sincerely,

Pat Tiberi
Member of Congress

Kevin Brady
Member of Congress

Devin Nunes
Member of Congress

Tom Price
Member of Congress

Lynn Jenkins, CPA
Member of Congress

Kenny Marchant
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