

September 6, 2011

Chairman Phil Roe
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Roe,

Thank you for holding a hearing in your subcommittee on July 26, 2011 on the Department of Labor's proposed regulation to redefine the term "fiduciary."

As you noted in your opening remarks, this proposal is an overbroad expansion of the fiduciary standard that will undermine efforts by employers and service providers to educate workers on the importance of responsible retirement planning. We are concerned that this proposal will limit investment choices and drive up costs for the individuals it is intended to protect.

You and the members of the subcommittee raised a number of important questions. In light of the issues raised at the hearing, there is clearly a need for the Department to re-propose the rule. For example:

- The Department appears to recognize the necessity of undertaking a more extensive cost benefit analysis than was prepared for the proposed regulation. The Assistant Secretary must revise the initial cost analysis, fully assess the cost to IRAs, fully assess the costs to plans, and publish the revised analysis for public comment, as is required by the Administrative Procedures Act. This work should accompany the publication of a repropose rule.
- The Department stated that staff has had conversations with the SEC regarding the Dodd-Frank Section 913 fiduciary standard for personalized retail investment advice. There is no assurance; however, that the SEC's yet-to-be-proposed standard and the proposed DOL standard will not be inconsistent and create confusion for consumers and brokers. The Department has not articulated how it envisions the two standards would work together to ensure consistent advice to retail investors, many of whom have multiple types of accounts with the same financial institution. The only way to assure this coordination is for the Department to repropose its rule with an explanation of how its proposal is to work in conjunction with the SEC's standard, assuming—as the Commission has suggested—that they will move forward under their Section 913 authority.
- The Department suggests that a compensation model will emerge that is neither commission based nor advisory fee based. We know of no such model. If the rule is so broad as to make all brokers fiduciaries, then the advisory fee model will be the only option available to investors. No rule should be based on the Department's unfounded view that new compensation models will somehow evolve to give investors access to the information they need.
- The Department has indicated that it will likely propose new prohibited transaction exemptions or amendments to existing exemptions in conjunction with the issuance of a final rule. It will not work for the Department to publish a final rule with a delayed effective date, while the public comments on proposed prohibited transaction exemptions. Stakeholders need an opportunity to review and comment on the Department's work including changes made to its proposal as well as proposed prohibited transaction exemptions intended to work in conjunction with its revised proposal. Providers will need to plan their businesses based on the law as it is finalized, not based on possible relief that may be granted at a later time. Further, businesses need time to rearrange their agreements with clients, build systems, train professionals, and create compliance systems. These steps cannot be accomplished moments before the effective date of the rule. The Assistant Secretary Phyllis Borzi said that the Department did not receive comments which highlight major issues of concern that would merit a reproposal; however, the 200 comment letters they received, along with the 1000 pages of testimony given at the hearing, and the

additional 65 comment letters following that hearing and testimony at this subcommittee's hearing strongly suggest otherwise. The rule must be repropose. There are virtually no stakeholders who disagree.

Given the importance of the issues and how intertwined they are both with what the SEC has indicated they intend to do under Section 913 and the prohibited transaction relief the Department will have to propose and grant, as well as the Department's recognition that there are areas of the proposed regulation with respect to which there are "misunderstandings" and areas that the Department intends to further clarify, the Department should make these changes and issue a new proposal. There is no statutory deadline or other time constraint for publishing a final rule – the imperative is to make the most of this opportunity to construct an interagency regulatory regime that provides the greatest assurance for investors and service providers. A reproposal will give all stakeholders an opportunity to review and comment on the Department's work, including changes made to its proposal, proposed prohibited transaction exemptions intended to work in conjunction with its revised proposal and its economic impact analysis.

We thank you for continuing to urge the Department to conduct responsible rulemaking in this area, and repropose the regulation, to make the DOL rule work without harming plans and participants and reducing retirement savings.

We look forward to continuing to work with you to strengthen the retirement security of millions of Americans.

Sincerely,

American Bankers Association

American Council of Life Insurers

Association for Advanced Life Underwriting

Financial Services Institute

Investment Company Institute

National Association for Fixed Annuities

National Association of Insurance and Financial Advisors

Securities Industry and Financial Markets Association

The Financial Services Roundtable

The Insured Retirement Institute