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May 20, 2011

The Honorable Hilda Solis
Secretary
United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

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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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