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CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

RANDEL K. JOHNSON
SENIOR VICE PRESIDENT
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EXEC. SECRETARIAT
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DEPT. OF LABOR
WASH. D.C.

The Honorable Hilda L. Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: **Definition of the Term "Fiduciary"**

Dear Secretary Solis:

I am writing this letter on behalf of the U.S. Chamber of Commerce ("Chamber"), the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. On February 3, 2011, the Chamber submitted comments on the proposed regulation, Definition of the Term Fiduciary, issued by the Department of Labor ("Department" or "DOL") on October 22, 2010.

The Chamber supports the efforts of the DOL in updating the regulation on the definition of a fiduciary to reflect modern realities. We believe that some changes are in order, principally to update the definition of a fiduciary to clarify that certain investment professionals upon whom plan sponsors rely for investment advice will be fiduciaries under the plan. However, as we stated in our February 3, 2011 comment letter, a balance needs to be struck that protects plans and participants while allowing for the free flow of information and services.

In this regard, there are certain areas where the Chamber believes that further discussion or clarification is needed. In the earlier comment letter, we expressed a number of serious concerns about the overly broad language of the proposal. We remain very concerned about these issues, particularly given the inadequate economic analysis and lack of data quantifying the economic impact of the proposal on workers, employers, and plan service providers. Dozens of Members of Congress, from both parties, have also sent letters questioning the Department's economic basis for the sweeping policy changes in its proposal. Indeed, during the recent House Subcommittee on Health, Education, Labor and Pensions hearing on the proposed rule, Members from both parties expressed serious reservations about the proposal, and asked that the Department revise the rule, conduct a thorough economic analysis quantifying both the size of the perceived problem and the impact of the Department's solutions, and re-propose the rule for public comment.

The proposed regulation makes very major changes from what has been the status quo for over 35 years. That makes it all the more important that the Department proceed in a manner that will best serve its mandate to protect workers' benefits. Moving directly to a final rule would result in unnecessary disruption to the voluntary retirement system. Stakeholders would not have the opportunity to see or comment on how the Department resolved the large number of significant technical and substantive issues addressed in the voluminous comments on the proposal or the regulatory impact analysis supporting the rule until conclusions are set in stone and it would be too late to make changes.

The Chamber is very concerned about the unintended consequences. Given the scope and complexity of the issues, a final regulation is virtually guaranteed to result in errors, necessitating extensive clarification, revision, guidance, formal amendment, and, very likely, litigation over both process and substance.[1]

Workers and employers are best served by having the opportunity to review and comment on a revised rule with a thorough economic analysis. Moreover, the President's recent directive to regulatory agencies requires no less. We believe this is the best course not only for workers, but for the Department as well, as it will significantly reduce the confusion and controversy attendant to the rule, as well as the likelihood of protracted, resource intensive litigation.

We appreciate the opportunity to continue to work with the Department, and we would be happy to discuss our concerns in more detail.

Sincerely,

Randel K. Johnson

Cc: The Honorable Phyllis Borzi
The Honorable Gene Sperling
The Honorable Cass Sunstein
The Honorable Bill Daley
The Honorable Tom Harkin
The Honorable Mike Enzi
The Honorable Max Baucus
The Honorable Orrin Hatch
The Honorable Dave Camp
The Honorable Sander Levin
The Honorable John Kline
The Honorable George Miller

[1] See, e.g., *Business Roundtable & U.S. Chamber of Commerce v. SEC*, No. 10-1305 (D.C. Cir. July 22, 2011).