



JUN 20 2012

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

Dear Chairman Kline and Ranking Member Miller:

On March 21, 2012, Department of Labor Secretary Hilda Solis testified in front of your committee regarding the Department's priorities for 2012. At that hearing, several members expressed interest in receiving updates on the status of the Department's project to update the definition of a fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA). As the Assistant Secretary for the Employee Benefits Security Administration (EBSA), I write to you in order to provide such an update so that you, your committee, and other interested members of Congress can remain informed about our efforts to ensure that our fiduciary regulations are relevant for the 21st century retirement marketplace.

Many members have stressed that it is important for the Department to work with other federal agencies with jurisdiction over the financial services industry and have urged the Department to harmonize its efforts to enhance fiduciary protections with those of the Securities and Exchange Commission (SEC) and others. We agree that regulations from different agencies should not be contradictory or overly burdensome. To that end the Department has consulted extensively with the SEC and others on both the legal and economic aspects of our initiatives.

In addition to such ongoing staff-level communications, my Deputy and I met with Chairman Schapiro and members of her senior staff on June 6, 2012 to discuss a variety of high-level regulatory issues, as well as the extension and enhancement of an existing memorandum of understanding between our agencies to better ensure the coordination of our important regulatory and enforcement responsibilities. The ongoing consultations are doing much to inform both our policy views and our assessments of the costs and benefits of potential regulatory approaches. We will continue to work with all agencies engaged in the process of enhancing fiduciary protections to ensure this important work is not impaired by conflicting standards.

One of the comments made at the March hearing and which the Department has heard most often from Members of Congress and industry stakeholders in response to the October 2010 fiduciary proposal concerned the need to better quantify the harm to workers or retirees that can arise when investment advisors' interests conflict with those of the plan participants and IRA owners they advise. In response to these comments, we are examining a wide array of evidence with the goal of developing a more robust economic analysis. That analysis will focus not only on the economic impact of a new rule on workers and retirees, but also on plan sponsors who often critically rely upon expert advice to discharge their own fiduciary responsibilities with respect to the management of plan assets and the selection of plan investment options.

As part of this process, we sent out two voluntary data requests in mid-December 2011. One was for the underlying data supporting the conclusions in the Oliver Wyman report, a document which was submitted as a comment on the Department's October 2010 proposal, and which has been cited as demonstrating that the costs of applying fiduciary rules to IRA advisors would be prohibitive. The Department's request was addressed to the commenter who, on behalf of a group of twelve financial firms that offer services to retail investors, engaged Oliver Wyman to prepare the report, and then submitted the report for the record. In response, the Department received some additional, but limited, aggregated data, while other, more granular underlying data was not forthcoming.

The Department also sent another, broader request to leading financial services industry groups. This was part of our ongoing effort to make sure we give interested stakeholders every opportunity to provide input. While the Department was disappointed not to receive many of the suggested data elements from industry sources, we have met with industry representatives and asked them to provide whatever information they had that would be useful to our efforts.

We appreciate the information that has been sent and are working diligently to review and assess it. The Department has also been collecting information from a variety of other sources. We will incorporate all of this information and feedback into our updated economic analysis of our updated proposal. We continue to welcome the receipt of any additional relevant data that interested stakeholders wish to provide in order to assist us with our work on this project, and will likewise incorporate any such data into our analyses as well.

The Department is not yet in a position to answer questions regarding the specific studies or data we will rely on in our proposal because the economic analysis is not yet complete. However, we will be happy to brief you once the repropounded regulation has been published. It is our intention to include accompanying proposed prohibited transaction guidance, as well as the relevant economic analysis, with any proposed regulation. All of these elements will be transparent and fully subject to the appropriate notice-and-comment rulemaking process. This will provide Members of Congress, other stakeholders and the general public ample opportunity to review and comment on our work.

We know that this issue matters a great deal to you and the others on the Committee since retirement security is one of the greatest challenges facing millions of American families today. We take our role in helping plan sponsors, individuals, and families with great seriousness of purpose and are committed to working with you and your colleagues for their benefit.

Sincerely,



Phyllis C. Borzi
Assistant Secretary

Cc: Representative Phil Roe
Representative Rob Andrews
Senator Tom Harkin
Senator Mike Enzi