U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

March 16, 2015

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 Phil Roe, M.D.
Chairman
Subcommittee on Health, Employment,
Labor and Pensions

Dear Chairman Kline and Chairman Roe:

I am writing in response to your March 4, 2014 letter to Secretary Thomas E. Perez regarding the Department of Labor's efforts to protect retirement savings for middle class families from harmful conflicts of interest by updating the fiduciary standard under the Employee Retirement Income Security Act of 1974 (ERISA). The Department appreciates the opportunity to provide you with an update on our efforts and coordination between the Department of Labor and the Securities and Exchange Commission.

A new report from the President's Council of Economic Advisers shows that the current, broken regulatory environment creates misaligned incentives that cost working and middle class families billions of dollars a year—with some individual families losing tens of thousands of dollars of their retirement savings.[1] These incentives cause some retirement advisers, including brokers and insurance agents, to encourage working and middle class families to move from low-cost employer plans to individual retirement accounts (IRA) that typically entail higher fees—and to steer working and middle class families into higher-cost products within the IRA market. Conflicts of interest, such as back-door payments or hidden fees for directing investors to products that are not in their best interest, likely lead, on average, to $17 billion of losses every year for working and middle class families. The Department's new proposal aims to remove outdated regulatory loopholes that make it hard for America's workers to count on receiving retirement investment advice that is in their best interest.

Although the Department and the SEC have different statutory responsibilities, we both recognize the importance of working together on regulatory issues in which our interests overlap, particularly where action by one agency may affect the community regulated by the other agency. To that end, the Department sought technical assistance from the SEC during the development of the draft proposal. That technical assistance has helped the Department draft a proposal that strikes a balance between protecting individuals looking to build their savings and

[1] White House Council of Economic Advisers, The Effects of Conflicted Investment Advice on Retirement Savings (Feb. 2015), https://www.whitehouse.gov/sites/default/files/docs/cea_coi_report_final.pdf.

minimizing disruptions to the many good practices and good advice that the financial services industry provides today.

As SEC Chair Mary Jo White has acknowledged on numerous occasions,[2] over the past two years, the Department has consulted extensively with SEC staff on the draft proposal. Indeed, Secretary Perez has discussed relevant aspects of the draft proposal with SEC Chair White on at least eight occasions, including:

- Nov. 22, 2013: Secretary Perez met with SEC Chair White and staff
- Jan. 8, 2014: Secretary Perez met with SEC Chair White
- Apr. 3, 2014: Secretary Perez spoke by phone with SEC Chair White
- Jul. 28, 2014: Secretary Perez spoke by phone with SEC Chair White and staff
- Aug. 26, 2014: Secretary Perez met with SEC Chair White and staff
- Nov. 6, 2014: Secretary Perez spoke by phone with SEC Chair White
- Dec. 3, 2014: Secretary Perez spoke by phone with SEC Chair White
- Jan. 8, 2015: Secretary Perez met with SEC Chair White and staff

Other senior officials and staff from both agencies have held numerous meetings and phone calls throughout the development of the draft proposal. These collaborative discussions were wide-ranging. The SEC staff provided technical assistance on the Department's proposal, including the regulatory impact analysis. The Department has made numerous changes in response to observations and issues raised by SEC staff and is grateful for the staff's thorough technical assistance.

The development of a draft proposal is just an initial step in the regulatory process. As you may be aware, on February 23, 2015, the Department submitted a draft proposal to the Office of

[2] See, SEC Chair Mary Jo White testimony, U.S. House of Representatives Committee on Appropriations, Financial Services and General Government Subcommittee, "Budget Hearing – Securities and Exchange Commission" (May 7, 2013); SEC Chair Mary Jo White testimony, U.S. Senate Banking Committee Hearing, "Mitigating Systemic Risk in Financial Markets through Wall Street Reforms" (Jul. 30, 2013); SEC Chief to Break her Silence on Fiduciary in 'Short Term' (Feb. 20, 2015) http://www.thinkadvisor.com/2015/02/20/sec-chief-to-break-her-silence-on-fiduciary-in-sho.

Management and Budget for review.[3] Under Executive Order 12866, OMB will coordinate review of the draft proposal to ensure it is consistent with applicable laws and that the policies of one agency do not conflict with the policies or actions taken by another agency, including the SEC.[4] During this review process, federal agencies with an equity in the draft proposal will have an opportunity for review and comment. This is another opportunity for SEC views to be considered. After DOL responds to comments received through OMB's interagency review process, the proposal will be issued as a notice of proposed rulemaking, along with proposed prohibited transaction exemptions. At that time, any interested party will have the opportunity to provide comment on all aspects of the proposal, including whether and how it accomplishes our goals of protecting individuals looking to build their savings and harmonizing with the regulated communities' responsibilities under the statutes enforced by the SEC.

Given the extensive technical assistance provided by SEC staff, any delay in moving forward would only hinder efforts to protect consumers from conflicts of interests among brokers, dealers, financial advisers, and others whose incentives may be misaligned with investors, potentially leading to deceptive and abusive practices. It will also delay the opportunity for the public to evaluate our proposal by participating in the comment process.

I am sure you would agree that all savers, regardless of their income level, deserve access to advice that is in their best interest. It is essential that any rulemaking in which we engage take into account the impact on middle and low-income Americans and on the regulated community, and we look forward to working with you on this and other issues of importance affecting America's workers. If you or any member of your staff has questions, please contact Kate Garza in the Department's Office of Congressional and Intergovernmental Affairs. She may be reached at (202) 693-4600.

Sincerely,

Adri Jayaratne
Acting Assistant Secretary

cc: The Honorable Robert C. Scott
Ranking Member
Committee on Education and the Workforce

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[3] The Department's Fall 2014 Regulatory Agenda indicated that a new notice of proposed rulemaking was under development. The Department's Regulatory Agenda and Regulatory Plan are available at http://www.dol.gov/asp/regs/agenda.htm.

[4] 58 Fed. Reg. 51735 (Oct. 4, 1993).