United States Senate
WASHINGTON, DC 20510

August 6, 2015

The Honorable Tom Perez
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Secretary Perez:

We write regarding the U.S. Department of Labor's (DOL) Notice of Proposed Rulemaking released on April 14 with respect to proposed changes to the definition of "fiduciary" of an employee benefit plan under the Employee Retirement Income Security Act of 1974. We share the goal of protecting hard-working Americans as they save for retirement. And we agree that too many Americans are insecure about their retirement. However, we encourage you to ensure that rules related to retirement savings do not work at cross-purposes in a way that could limit investor access to education and increase costs for middle-class Americans.

Americans who spend their lives working hard deserve a secure retirement, but unfortunately far too many approach it unaware of the challenges that lie ahead and thus are either without a clear plan to ensure long-term security or simply unable to attain long-term security. That is why we strongly supported Section 913 of the Dodd-Frank Act to provide for the establishment of a uniform fiduciary duty that applies to both Broker-Dealers and Registered Investment Advisors, benefiting all investors looking to save for retirement.

We support holding Broker-Dealers to a best-interest standard, and we support the DOL's overall goals. However, we are concerned that the rule in its current form could stifle access to meaningful investment advice for millions of Main Street investors. As you consider changes to the proposed rule, we strongly encourage you to focus on the following areas:

1. *Business Model Neutral:* We urge you to make substantive changes to the rule based off of feedback received through public comment to ensure that it is effective and does not significantly disrupt the current business model. It is critically important that Broker-Dealers can use the *Best Interest Contract Exemption* to provide their customers with commission-based advice. This type of advice has long allowed middle-class Americans to access affordable retirement advice. Fundamentally altering the current business model, which we believe the rule would do in its proposed form by effectively requiring level fees – whether intentional or unintentional – could limit access to retirement advice and may push investors out of many options that they can afford. It is also important to

note that Congress clearly defined in Section 913 of Dodd-Frank that rules addressing changes to standards of care need to assess the potential impact on retail customers and that any changes preserve the business models currently in place. We hope that as the rule moves through the process this directive in Dodd-Frank will be considered.

2. *Variety of Products:* As currently proposed, we remain concerned that the Department's proposal could eliminate a number of products that currently exist in the marketplace today, such as annuities. While certain products, including annuities, may not be the right fit for every investor, we do not believe eliminating access to products is an appropriate solution.

3. *Education:* The gap between what individuals need for retirement and what they have set-aside for retirement is in the trillions of dollars. Educational materials are a critical tool to reduce this troubling investment gap. Unfortunately, the rule in its current form could limit educational materials to abstract items and conversations that will do little to assist the average investor. We urge you to make significant changes to ensure future retirees are able to access pertinent information about specific products to help prepare them for retirement.

4. *Point of Rollover/Leakage:* We all agree that a key aspect of whether or not someone will have the necessary means to live out their retirement is influenced by decisions that are made at the point of rollover. It is clear that there is already a significant amount of leakage at the point of rollover, as evidenced by the GAO's study, "401(K) Plans, Policy Changes Could Reduce the Long-term Effects of Leakage on Workers' Retirements Savings", which cites that nearly $74 billion is cashed out during job changes.

   We are concerned though, as currently proposed, all conversations would trigger fiduciary duties, even those where no concrete advice is given. We fear this could lead investors to cash out their retirement accounts and would encourage the Department to look for ways to ensure that this doesn't occur.

5. *Sales:* A key aspect of retirement savings comes from small businesses being able to provide options to their employees. We are concerned that the seller's exemption is limited to an extent that would prevent financial professionals from being able to engage small businesses without triggering fiduciary duties.

6. *Current Investors:* The proposed rule runs the risk of forcing a significant amount of existing investors to go through an arduous process without obvious benefits. We believe existing investors should have the option of forgoing this process if they so choose.

7. *Coordination:* We strongly encourage you to ensure that efforts between the Department of Labor, the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) do not work at cross-purposes in a way that results in conflicting regulatory structures and strongly urge you to monitor the progress of both of these Agencies on this issue. We urge you to solicit meaningful input from the SEC and the FINRA, as they are currently the primary regulators of Broker-Dealers and provide us with details on the exact suggestions you have taken from both of these institutions. Based on your previous answers to this question, it is unclear what input your Department has incorporated from either the SEC or FINRA.

Finally, we request that DOL engage relevant stakeholders, including our offices, as the rulemaking process continues. This open dialogue will improve communication and ease unnecessary concerns. Indeed, concern about the rule as currently drafted has already led to legislative proposals in Congress that would prevent the DOL from completing action on this rule. We believe there is an opportunity to craft a system that better protects investors while at the same time ensuring that we do not limit access to advice. This will allow Main Street investors to appropriately prepare for and attain financial security during their retirement.

We look forward to continuing our conversations on how to reach our shared goals and appreciate your consideration of these requests.

Sincerely,

Jon Tester
United States Senator

Joe Donnelly
United States Senator

Heidi Heitkamp
United States Senator

Angus King
United States Senator