

United States Senate

WASHINGTON, DC 20510

July 30, 2015

BY FIRST-CLASS AND ELECTRONIC MAIL

The Honorable Thomas Perez
Secretary of the Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

Dear Secretary Perez:

On July 21, 2015, you testified at a hearing in the Subcommittee on Employment and Workplace Safety of the Senate Committee on Health, Education, Labor and Pensions (the “Hearing”), of which we are members, on the Department of Labor’s proposed “Conflict of Interest Rule” and related rules (collectively, the “Rule”). We write to encourage the Department to re-propose the Rule in light of the testimony you provided to us at the Hearing.

As you are aware, the Rule is the source of intense scrutiny because of the significant impact it will have on the provision of investment advice to families in our States who are saving for retirement. Over 800 comment letters from individuals and stakeholders were filed during the comment period. Many of the comment letters agree with the Department’s position that financial professionals should work in the “best interest” of a customer but disagree with the way in which the Rule is currently drafted. These commenters offered constructive feedback designed to help the Department improve the Rule. After all, many stakeholders, including those who provide investment advice, predict that if the Rule were to become final in its current form, only savers with high balance accounts—the proverbial “one-percent”—would retain access to investment advice. Certainly it cannot be the Department’s aim to deprive Main Street America of critical access to professional retirement planning advice.

We are pleased that you took the opportunity at the Hearing to state, in response to a question from Senator Franken, that even though the Department has not yet processed all the comments, you are “quite confident that, if history is a guide, the final rule will be *materially different* than, and better than, the proposal . . .” (emphasis added). You also wrote in your June 17, 2015, testimony before a subcommittee of the Education and Workforce Committee of the House of Representatives:

The proposed rule and its accompanying Regulatory Impact Analysis includes numerous requests for comments on particular issues – more than any other rule that we have published while I have been Secretary. I think of these specific requests as an *invitation to a very real conversation* that I hope will prove to be a productive one. Our track record gives us credibility when I say that *we are open to making real changes in the rule to improve it*, and that's why we urge our partners in the industry and advocacy community to engage in a good faith *dialogue* during the comment process.¹ (emphasis added)

We take you at your word that the Department will take seriously the concerns raised by the comment letters on the Rule and produce a revised text that, as you promise, will differ “materially” from the Rule in its current form. We further welcome your commitment to have a dialogue—a two-way conversation—with stakeholders, members of Congress, and the American people about whether and how to amend the Rule to ensure that it does not have the dire consequences some predict it would have if finalized in its current form. While we acknowledge the Department’s urgency to finalize a rule to ensure that financial professionals act in the best interest of their clients, we trust that you will extend the rulemaking process to accommodate the dialogue you promised. After all, the Department’s goal should be to get the Rule done *right*, not to get an unworkable Rule done *right now*.

Given your confidence that the Rule will change materially, your personal commitment to have a dialogue with stakeholders about the text of the Rule, and based on the Department’s own precedent in re-proposing the Rule in April 2015 because of its material differences from the October 2010 proposal, we fully expect the Department to re-propose the materially different Rule prior to its becoming final. As you have pointed out on numerous occasions, the economic consequence of the Rule measures in the billions—even minor changes to the language of the Rule, let alone material changes, can mean the difference between whether significant numbers of our constituents lose access to investment and retirement advice. Please confirm by reply letter to us not later than August 14 that the Department will re-propose the Rule in its materially different form, consistent with the President’s pledge of “Transparency and Open Government.”² If you cannot commit the Department to re-proposing the Rule, please explain why the Department’s


¹ Available at <http://www.dol.gov/ebsa/newsroom/ty061715.html>.

² See https://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment.

Hon. Thomas Perez
July 30, 2015
Page 3

material changes to a rule of this magnitude should not be made available to the American public whose lives will be profoundly affected by it.

Sincerely,


TIM SCOTT


PAT ROBERTS


MARK KIRK


BILL CASSIDY, M.D.