

THE NEW ENGLAND COUNCIL

July 21, 2015

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Perez:

On behalf of The New England Council —the nation’s oldest regional business association— I write to you today regarding the Department of Labor’s (DOL) recent proposed rule that would change the definition of fiduciary investment advice under the Employee Retirement Income Security Act of 1974 (ERISA). The New England Council is a non-partisan alliance of businesses, academic and health institutions, and public and private organizations throughout New England formed to promote economic growth and a high quality of life in the New England region. The Council’s mission is to identify and support federal public policies and articulate the voice of its membership regionally and nationally on important issues facing New England.

First, it is important to note that The New England Council, and its member companies, welcome and believe strongly in a best interest standard. Indeed, I believe it is safe to say that we would associate ourselves with your comments at a recent retirement savings event at the Brookings Institution in which you said “the best interest standard is the right thing to do, and the smart thing to do.” The Council is proud of its member companies in the asset management and financial services space, and we know that they strive every day to put their customers first. We applaud you and the Obama Administration for taking action that removes the “bad apples” from this equation, and The Council and its member companies stand ready to work with you on this laudable goal.

That said, we believe it is critical that any corrective action does not end up casting too wide a net, resulting in a situation where investors are deprived of critical services and advice. To that point, we have heard two concerns repeatedly related to the workability of certain specifics within the DOL proposal and how the rule, as drafted, would impact some of our member companies’ ability to serve American investors in their efforts to save for a bright retirement.

First, we understand that the proposal’s primary best interest contract (BIC) exemption from the prohibited transaction rules does not apply to small businesses with participant-directed plans. Additionally, we have heard concern that the seller’s carve-out, as currently structured, would negatively impact the ability of brokers and dealers to interact with small businesses. We believe that, as an unintended consequence, the current proposed rule will end up limiting small

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businesses from receiving the help they need in establishing and maintaining a retirement plan. If small businesses are left without access to advice services, they are less likely to offer plans and some may even terminate their plans. This will hinder many American workers from saving for retirement.

Second, we have heard concerns that, due in large part to the extremely broad definition of investment advice, this rule as drafted would effectively prohibit low and middle income Americans – the same people who would benefit most from a properly designed rule – from obtaining guidance and advice. The conditions and limitations of the best interest contract exemption are so burdensome that few service providers will be able to navigate it, leaving retirement savers without access to individual guidance interactions.

At the end of the day, it is important that any final rule achieve a balance between protecting investors and financial consumers from unscrupulous actors and ensuring that those consumers and business owners have access to the types of retirement products, education, and advice that can help them achieve the American dream.

At that recent Brookings Institution/Hamilton Project event, you also said that “the more voices that are heard, the more open, inclusive and transparent the process, the stronger the new rule will be,” with the outcome of the public comment period being “that the proposal accomplishes its goals in the most simple and least burdensome way possible.” We applaud you and your staff for recognizing the need to get any final rule on this subject right, and for all of your efforts to promote dialogue, discussion, and debate on this important topic.

As such, we hope that, prior to issuing a final rule, you will thoroughly examine all comments on these issues and work with all stakeholders – particularly those in the financial services industry charged with providing advice to Americans – to make any necessary and productive changes that will assuage these concerns and ensure that the rule is workable for all parties involved.

We thank you for your consideration of the concerns laid out in this letter, and we look forward to continuing to work with you on this important matter. If you have any questions regarding this letter, please contact me at 617-723-4009.

Sincerely,

A handwritten signature in black ink that reads "Emily J. Heisig". The signature is written in a cursive, flowing style.

Emily J. Heisig
Senior Vice President

CC: All members of the New England Congressional delegation