August 4, 2015

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

Dear Secretary Perez:

We write today in regards to the U.S. Department of Labor's (DOL) recently proposed regulation that would change the definition of fiduciary investment advice under the Employee Retirement Income Security Act of 1974 (ERISA). We appreciate the thinking that went the Department’s best interest standard framework for personalized investment advice to retirement savers. We also appreciate the time and effort that has gone into seeking a balance between protecting consumers and making sure they receive the necessary assistance in navigating important investment decisions. We know that individuals achieve better outcomes in preparing for a financially secure retirement when they receive education and guidance from financial advisers and service providers of retirement products such as individual retirement accounts (IRAs) and workplace savings vehicles such as 401(k) plans. The current proposal, however, would do significant harm to individuals saving for retirement – particularly lower and middle income individuals – and small businesses that maintain, or want to adopt, retirement plans.

As with the DoL’s original proposal in 2010, this rule would greatly expand the types of interactions with retirement savers that would be treated as fiduciary investment advice. Unlike the 2010 proposal, the DoL has helpfully included new exemptions from ERISA’s prohibited transaction rules so that various service models aimed at helping different types of individuals are not banned. Unfortunately, we have heard from numerous constituents in our states that the proposed exemptions are extremely limited in scope and largely unworkable, effectively prohibiting substantial assistance that is in the best interest of retirement savers across all income levels. As a result, while we understand that the financial services firms in our states support a best interest standard, the proposed rule would have the impact of prohibiting these firms from providing retirement savers with the advice and guidance they need and want – even if that guidance is in the saver’s best interest. Consequently, we request that, prior to the publication of a final rule, the Administration work with representatives of the small business community and members of the financial services industry to produce a workable rule that protects savers yet does not hamstring or prevent the industry from using long established service models to help individuals plan and save for retirement.

Without significant changes to the proposed rule, we are concerned that some basic needs of retirement savers will not be met:

- **The rule restricts critical investment education and guidance**. Under the proposal, providing examples of specific investment funds in connection with a model asset allocation would now constitute fiduciary investment advice. Without identifying specific investment funds, the asset allocation materials will be neither effective nor useful for most savers.

- **The rule materially reduces assistance to small businesses**. The "principles-based" exemption excludes plan sponsors of small participant-directed plans. Essentially, this means that small businesses cannot look either to financial advisers or retirement service providers for assistance in structuring their plan's fund line-ups. This will both stifle small plan formation and result in many business owners terminating their plans, hindering many of our constituents and employees of small businesses from saving for a reliable future. In addition, if small businesses do not get the help they need to offer retirement plans, they will be less competitive with larger businesses, resulting in less innovation and jobs in our states.

- **The rule limits rollover and distribution assistance.** The extremely broad nature of the definition of investment advice would curtail not only investment assistance but critically important discussions and communications about plan distributions and rollovers. We have seen data that savers who receive personalized assistance from a financial professional are three times less likely to cash out of a retirement plan when they leave a job. The proposed rule could have the effect of harming investors by increasing the likelihood that they take premature distributions from their retirement savings, subjecting them to severe penalties and taxes.

Our number one concern as governors is that any federal rulemaking on the subject of retirement savings not negatively impact low- and moderate-income citizens looking to save for their futures or small businesses. Better outcomes in private retirement savings can lessen the burden on our publicly funded state programs for those who cannot meet their own needs in retirement. It is critical that the final rule allows financial services providers in our states to continue providing the much needed investment education and guidance to savers and small businesses.

We thank you for your consideration of our concerns and recommendations, and we look forward to staying apprised of further developments.

Respectfully,

Charles D. Baker

Maggie Hassan

GOVERNOR CHARLIE BAKER
Commonwealth of Massachusetts

GOVERNOR MAGGIE HASSAN
State of New Hampshire