

Congress of the United States
Washington, DC 20510

May 3, 2011

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Mary L. Shapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The Honorable Gary Gensler
Chairman
U.S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: Definition of the Term Fiduciary

Dear Secretary Solis and Chairmen Shapiro and Gensler:

We write regarding the work the Department of Labor (the “Department”), the Securities and Exchange Commission (the “SEC”), and the Commodity Futures Trading Commission (the “CFTC”) are doing with respect to the fiduciary standards under the Employee Retirement Income Security Act of 1974 (“ERISA”), the fiduciary standards under the securities laws, and the business conduct standards for swap dealers and major swap participants under the Dodd-Frank Act. We appreciate all of the steps the Department, the SEC, and the CFTC are taking to protect American workers and investors.

However, some stakeholders have expressed a concern that the Department, the SEC, and the CFTC may not be coordinating in areas where the agencies’ efforts overlap. In particular, some are concerned that agencies may not be coordinating with respect to their projects regarding fiduciary standards and the business conduct standards. We know you share our commitment to ensuring that different sectors of government are working together. Therefore, we ask you to provide us with a better understanding of how the Department, the SEC, and the CFTC are coordinating efforts. In particular, we are interested in steps the Department, the SEC, and the CFTC have taken to share relevant information, avoid potential conflicts, and prevent a duplication of effort.

Some stakeholders are also concerned that the Department's proposed regulation defining "fiduciary" under ERISA might have unintended effects, such as increasing administrative costs or restricting the availability of investment education. Department staff has indicated a willingness to address those concerns in the final regulation, and we appreciate that the proposed rule expressly retains the *status quo* with regard to the investment education provided under Interpretative Bulletin 96-1. Prop. Reg. § 2510.3-21(c)(2)(ii)(A) (stating that the "provision of investment education information and materials within the meaning of 29 CFR 2509.96-1(d)" will not be treated as investment advice under the rule).

As you move forward with this rule, we ask you to continue to solicit additional feedback from stakeholders, particularly with respect to the rule's effect on Individual Retirement Accounts. For example, you could conduct additional outreach efforts, issue formal requests for specific comments as part of an interim final rule, or in the event the Department fundamentally changes its approach, issue a new proposal with respect to one or more aspects of the rule. We think such feedback will ensure that the final rule provides significantly increased protections while, at the same time, being both practical and administrable.

Finally, we believe it is important for the industry to have adequate time to come into compliance with the Department's final regulation. Therefore, an extended effective date would be appropriate for provisions of the regulation that involve significant behavioral or systems adjustments.

We look forward to your response. Should you have any questions, please do not hesitate to contact our staff.

Sincerely,



Tom Harkin, Chairman
Committee on Health, Education,
Labor & Pensions



Max Baucus, Chairman
Committee on Finance



Tim Johnson, Chairman
Committee on Banking, Housing
& Urban Affairs



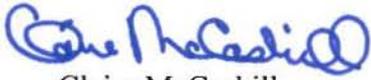
Debbie Stabenow, Chairman
Committee on Agriculture,
Nutrition & Forestry



Jeff Bingaman
U.S. Senator



Bob Casey, Jr.
U.S. Senator



Claire McCaskill
U.S. Senator



Jon Tester
U.S. Senator



Kirsten Gillibrand
U.S. Senator