July 31, 2013

To: Members of the United States Senate

Dear Senator:

It has come to our attention that a letter is being circulated for Member sign-on that is intended to prevent the Department of Labor (DOL) from moving forward on rules to protect vulnerable retirement plan participants and IRA investors from financial services providers who seek to profit at their expense. **We are writing to urge you not to sign on to this letter.**

The ERISA fiduciary rules that DOL is responsible for are intended to protect workers' retirement savings from fraudulent, deceptive, and misleading practices. They are crucial to retirement security for many millions of people. There are, however, critical gaps in those protections, in part because the rule that determines when a person providing investment advice is a fiduciary was drafted in a way that makes it simple to avoid fiduciary status. As a result, important protections do not apply in many situations in which financial professionals provide advice to workers and retirees, including with regard to 401(k) roll-overs. A recent Government Accountability Office (GAO) study that examined roll-overs from retirement plans into IRAs found significant problems with the roll-over recommendations retirement plan participants received.[1] It is gaps and critical risks such as these that the DOL rulemaking is intended to address.

Unfortunately, the sign-on letter being circulated proposes steps that would at best significantly delay, and at worst entirely prevent, the DOL from acting. The DOL is close to issuing a proposed rule in this area, but the letter suggests that the DOL should be precluded from moving forward until the Securities and Exchange Commission (SEC) completes a separate rulemaking under the securities laws that it has not yet initiated and may never finalize. It bases that proposal on the false suggestion that, in adopting Section 913 of the Dodd-Frank Act, Congress intended to establish a uniform fiduciary standard that extended beyond the securities laws and into ERISA. In fact, Section 913 makes no mention of ERISA, and there was no discussion of ERISA in the drafting of this legislation.

The letter also repeats unfounded industry talking points suggesting that a DOL rule would limit the availability of advice to retirement investors. It is clearly premature to make such a claim in advance of the rule proposal. Moreover, the argument appears to be based, at least in part, on the assumption that the DOL rule will preclude charging commissions, despite the fact that DOL has repeatedly stated that it will not do so. Furthermore, the DOL has responded to comments on its initial rule proposal to ensure that its final rule does not inappropriately limit worker access to beneficial advice. DOL has conducted an extensive economic analysis which industry groups demanded and then resisted supplying data for, and DOL has promised to issue its revised rule with accompanying prohibited transaction exemptions to ensure that commenters can fully assess its potential impacts. Finally, DOL has coordinated closely with the SEC in order to ensure that its rule does not conflict with any rulemaking the SEC may eventually adopt.

[1] U.S. Government Accountability Office, *401(k) Plans: Labor and IRS Could Improve the Rollover Process for Participants,* (GAO-13-30), March 2013.

In short, the DOL rulemaking addresses critical retirement protection concerns and the rule should be judged on its merits when it is re-proposed. We urge you to allow the DOL to move forward with rulemaking to protect the financial security of American workers and retirees. Toward that end, we urge you in the strongest possible terms not to sign on to this letter to OMB, nor to otherwise prevent the DOL from acting to protect retirement plan participants.

Sincerely,

AARP
AFL-CIO
Americans for Financial Reform
Consumer Federation of America
Demos
Pension Rights Center
Public Citizen
U.S. PIRG