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REVENUE MEASURES
DEMOCRATIC LEADER,
FRIENDS OF IRELAND CAUCUS

Congress of the United States
House of Representatives
Washington, DC 20515

April 15, 2011

The Honorable Timothy Geithner
U.S. Treasury Department
1500 Pennsylvania Avenue
Washington, D.C. 20220

The Honorable Hilda Solis
U.S. Labor Department
200 Constitution Ave.
Washington, D.C. 20210

Dear Secretary Geithner and Secretary Solis:

We are writing today with respect to the Department of Labor's proposal to redefine the term "fiduciary" for purposes of the Employee Retirement Income Security Act of 1974 ("ERISA") and for purposes of certain Internal Revenue Code provisions affecting IRAs and similar arrangements.

We understand the Department's desire to update the definition of a fiduciary and we support your efforts to examine the relationship between advisors and plans sponsors, participants, and investors. The definition of fiduciary needs to be broad enough to ensure that advice provided to retirement plan participants and plan sponsors is designed to serve their interests. On the other hand, if the definition is too broad, we risk losing investment education and information if advisors withdraw from these services, leading to less choice and higher costs. Overall, we believe any new rule must be balanced in order to increase protections for participants without adversely impacting access or costs.

We believe that this can be achieved with modifications to your proposed rule. Assistant Secretary Borzi has been very generous with her time in agreeing to meet with interested Members and staff on this issue. While her assurances that the exemption process is ongoing and could provide further clarifications contemporaneous with the release of the final rule are encouraging, we share the concerns that some have voiced that greater transparency regarding the contemplated modifications and clarifications, such as through re-proposing the rule, would be very beneficial.

Given that other agencies are pursuing similar regulations affecting the same advisors within the same industry but along differing timelines, we urge the Department to coordinate its efforts with all affected government agencies, pursuant to the President's Executive Order on

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Improving Regulations. There are many examples of issues where the Department should consider the effect of its proposed regulation on the availability of investment information, and where the Department needs to coordinate with other agencies. For instance, the staff of the Securities and Exchange Commission ("SEC") has issued a study stating that investors are confused and harmed by receiving advice from advisors that are subject to different duties of care. Yet the Department's proposal and the SEC staff's recommendation together would enshrine a system whereby advisors can have different duties to the same investor, one duty with respect to amounts saved in an IRA or a retirement plan and a different duty with respect to other amounts.

Moreover, it is critical that any new definition of fiduciary not effectively eliminate the provision of investment information by broker/dealers through rules that are inconsistent with the longstanding structure of the broker/dealer industry. Small businesses and IRA owners in particular rely on broker/dealers for critical investment information and education. We are cognizant of Assistant Secretary Borzi's perspective that broker/dealers can subvert the existing regulatory structure, but a single set of rules from a coordinated regulatory effort would simply work better in this case. Since Treasury will play a significant role in enforcement of the new rules as they apply to IRAs, it is also essential that Treasury be included in the formulation of the new regulations.

Under Dodd-Frank, the Financial Stability Oversight Council (FSOC) is charged with the responsibility of facilitating coordination of rulemaking by Federal agencies that impacts the financial system. Since you serve as the chairman of FSOC, Secretary Geithner, you have a critical role to play in ensuring that the new regulations from the Department of Labor and the Securities and Exchange Commission bring clarity, and not confusion, to the definition of fiduciary.

While we support your efforts to strengthen the fiduciary protections, we hope you will work for a balanced and coordinated rule. We are ready to assist in those efforts.

Sincerely,

Richard E. Neal
Member of Congress

John Lewis
Member of Congress

Mike Thompson
Member of Congress

John Larson
Member of Congress

Ron Kind
Member of Congress

Bill Pascrell, Jr.
Member of Congress

Shelley Berkley
Member of Congress

Joseph Crowley
Member of Congress

cc: The Honorable Jacob Lew
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