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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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<http://help.senate.gov>

May 18, 2015

The Honorable Barack Obama
President of the United States of America
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear President Obama:

We write to encourage you to take action as soon as possible to facilitate the state-based efforts aimed at providing every working family the opportunity to prepare for retirement. A significant number of states have taken important steps toward building a more inclusive private retirement system. However, those efforts to solve the retirement crisis are being hampered by a perceived lack of clarity regarding the application of federal labor and tax laws.

There is no question that many Americans are not financially prepared for retirement. Over 50 percent of employees work for an employer that does not sponsor a retirement plan, and the median retirement account balance for workers age 55-64 is a mere \$100,000. In the aggregate, the retirement savings deficit – meaning the difference between what people have saved for retirement and what they should have saved at this point – is at least \$4.13 trillion and possibly as high as \$14 trillion.

A major cause of the retirement crisis is that almost half of employees work for an employer that does not sponsor a retirement plan. Employees without access to a plan at the workplace are much less likely to save. You have repeatedly called on Congress to address the problem by passing legislation, such as the automatic Individual Retirement Account (“IRA”) proposal. Although Congress has not yet acted, there are important reforms happening at the state level that have the potential to help millions of families save for retirement.

Across the country, states are working to solve the retirement crisis by making saving easier, less expensive and more automatic. For example, both California and Illinois have passed legislation that asks employers that do not offer a retirement plan to automatically enroll their workers in a payroll deduction IRA. And states like Oregon, Washington, Connecticut, and New Jersey also are actively working on legislation to implement workplace opportunities to save for retirement. These efforts have the potential to help working families, particularly those of modest means, build a retirement nest egg. However, unfortunately, there is a perception among some that federal labor and tax laws, including the Employee Retirement Income Security Act of 1974 (“ERISA”), may be a barrier to state action.

We respectfully request that you ask the Department of Labor and the Department of the Treasury to remove any potential uncertainty with respect to the application of federal law to the state-based reform initiatives. Specifically, the agencies should clarify that –

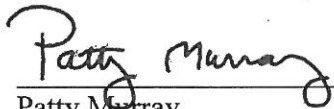
- (i) California's and Illinois' Secure Choice Retirement Savings Programs, and similar IRA-based programs enacted in the future, are not preempted by ERISA;
- (ii) the retirement savings vehicles created by those laws, and similar IRA-based vehicles created by the laws of other states in the future, are not "plans" subject to ERISA; and
- (iii) contributions to the savings vehicles created by those laws, and similar IRA-based vehicles created by the laws of other states in the future, are tax-preferred at the federal level.

Furthermore, please provide specific guidance on what other types of state-based IRA vehicles are not to be subject to ERISA, including information on the program features that could be adopted without triggering ERISA.

Such clarifications are needed as soon as possible. California and Illinois are in the midst of implementing their laws, and they need immediate guidance to help them move in the right direction. Other states considering similar initiatives are not far behind and also need guidance on the application of federal law as soon as possible.

We know addressing the retirement crisis is an important issue for you, so we ask you to make providing guidance to the states a priority. Of course, we stand ready and willing to work by your side and provide any support you may need.

Sincerely,



Patty Murray
Ranking Member
Senate HELP Committee



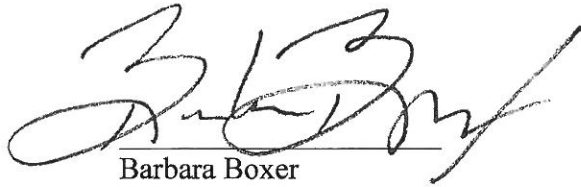
Ron Wyden
Ranking Member
Senate Finance Committee



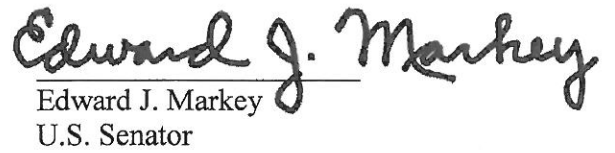
Bernard Sanders
Ranking Member
Primary Health & Retirement
Security Subcommittee of the
Senate HELP Committee



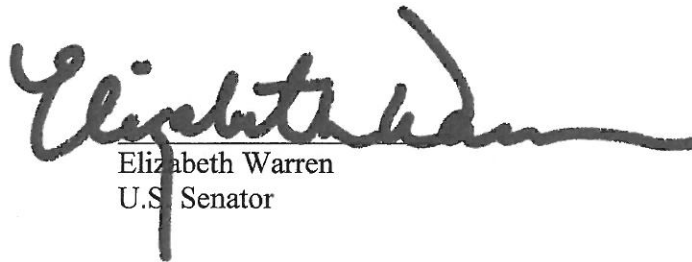
Sherrod Brown
Ranking Member
Social Security, Pensions &
Family Policy Subcommittee
Senate Finance Committee



Barbara Boxer
U.S. Senator



Edward J. Markey
U.S. Senator



Elizabeth Warren
U.S. Senator



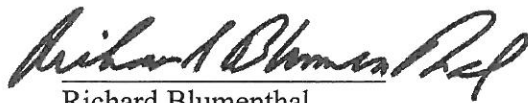
Al Franken
U.S. Senator



Patrick Leahy
U.S. Senator



Richard J. Durbin
U.S. Senator



Richard Blumenthal
U.S. Senator



Sheldon Whitehouse
U.S. Senator



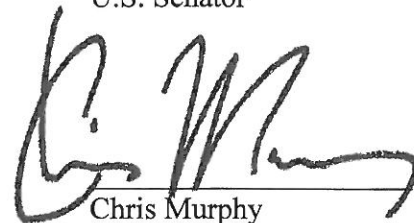
Robert Menendez
U.S. Senator



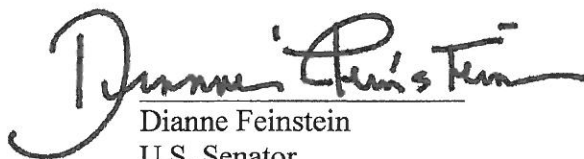
Jeffrey A. Merkley
U.S. Senator



Barbara Mikulski
U.S. Senator



Chris Murphy
U.S. Senator



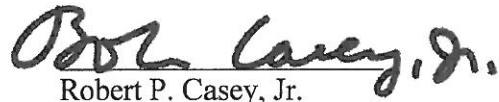
Dianne Feinstein
U.S. Senator



Claire McCaskill
U.S. Senator



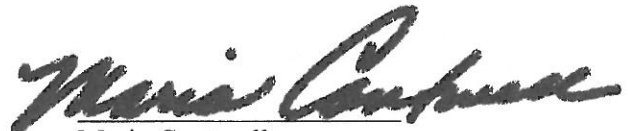
Mazie K. Hirono
U.S. Senator



Robert P. Casey, Jr.
U.S. Senator



Amy Klobuchar
U.S. Senator



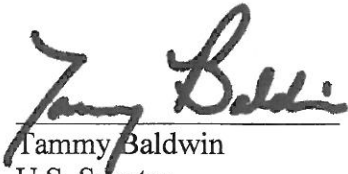
Maria Cantwell
U.S. Senator



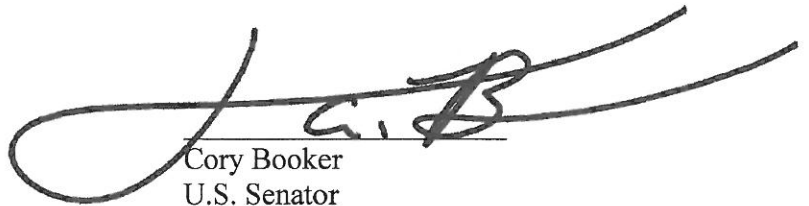
Tim Kaine
U.S. Senator



Kirsten Gillibrand
U.S. Senator



Tammy Baldwin
U.S. Senator



Cory Booker
U.S. Senator

cc: The Honorable Thomas Perez, Secretary, U.S. Department of Labor
The Honorable Jack Lew, Secretary, U.S. Treasury Department
The Honorable Jeffrey Zients, Director of the National Economic Council and Assistant
to the President for Economic Policy