

United States Senate

WASHINGTON, DC 20510

December 4, 2015

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

Dear Secretary Perez,

We are writing regarding the Department of Labor's ("DOL's") proposed rulemaking on the definition of "fiduciary" under the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code. We appreciate and share your goal of strengthening the retirement income security of all Americans. We also appreciate your longstanding dialogue with Congress regarding how to improve the rule and avoid any unintended negative consequences for the most vulnerable American savers.

As you know, we have worked together and with our colleagues in Congress for many years to advance retirement security for all Americans. We are proud to have authored major federal legislative changes to our retirement system that reflected needed updates, including provisions to improve portability of retirement plans and to help low- and moderate-income families save for retirement. Our long-standing involvement in retirement policy debates in Congress informs our perspective on the proposed rule and the appropriate role of the legislative branch in shaping the policy related to a best interest standard.

Like you, we strongly support a best interest standard and believe that the interests of savers and retirement plans must be placed above those of their advisors. However, like others, we have concerns about the unintended consequences that the rule could have on the ability of savers to access the investment advice they need. Specifically, we are concerned that the proposed rule would potentially limit the ability of low- and middle-income savers to afford or access advice. In addition, we are concerned that the proposed rule could diminish the availability of advice for small businesses and access to retirement products that provide lifetime income. Appropriately defining investment education—including the ability to provide investors with specific examples—is an important issue that could also have significant consequences for the ability of savers to get the information they need to prepare for a secure retirement.

We also feel very strongly that Congress has an important role to play in this debate. As you know, through the enactment of ERISA, Congress designed the retirement framework in place today. Congress can and should continue to examine our retirement framework to address any needed changes.

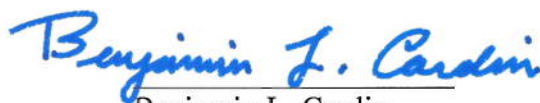
Unlike any other actor in retirement policy, Congress has jurisdiction over every aspect of the savings landscape – from workplace retirement plans and individual savings accounts, to the sales professionals and investment advisors that support American families and businesses in their retirement savings choices. While we greatly appreciate the DOL’s efforts in addressing critical pieces of the retirement savings landscape, we believe that it is also important for Congress to examine the entire retirement policy framework and, if needed, work to design updates to our system. This Congressional involvement can take many forms. It may mean designing a legislative solution that imposes a best interest standard, as some of our colleagues are contemplating. It may mean acting in close coordination with the DOL to provide input and receive updates on the proposed rule. Regardless of the nature of Congress’s involvement and input, Congress has a clear role to play in making certain that any changes – whether regulatory or legislative – achieve the right policy outcome and ensure consistency across the retirement landscape.

We appreciate your engagement with Congress on the rulemaking and your continued support for the involvement of Congress in any major changes to our retirement system. We look forward to an open and productive dialogue on this critical public policy issue.

Sincerely,



Rob Portman
United States Senator



Benjamin L. Cardin
United States Senator