



October 29, 2015

Re: DO NOT SIGN – Dear Colleague Letter Urging DOL to Provide Additional Comment Period for Fiduciary Rule

To Members of the House of Representatives:

It has come to our attention that a Dear Colleague is being circulated asking Members to sign a letter to Department of Labor (DOL) Secretary Perez urging DOL to provide an additional short comment period before promulgating the final ERISA fiduciary rule. **We are writing to urge you not to sign this letter.**

The request for an additional comment period is unnecessary given the extraordinarily lengthy comment and hearing process that has already occurred, which included 120 days of open public comment and four days of public hearings with 25 panels and 75 witnesses. The highly interactive rulemaking process has worked precisely as intended. Based on public statements made by Secretary Perez and other DOL officials, the DOL is carefully considering the constructive input that it has received and has committed to make changes to streamline the rule and make it more operational.

While we understand that the intent behind the letter is not to delay the publication of a final rule, we are concerned that the practical result of a third proposed rule would be to invite another cycle of attacks from those who wish to defeat, not improve the rule. It would also impose additional obligations on the part of the DOL to review and address yet another round comments before reaching a final rule.

The approach proposed by the letter is not consistent with the requirements of the Administrative Procedure Act, and is not consistent with good governance principles. Courts disfavor requiring additional comment periods in a fashion that could result in an agency “find[ing] itself stuck in an infinite feedback loop of public comments.” *See, e.g., Alaska v. Lubchenco*, 825 F. Supp. 2d 209, 224 (D.D.C. 2011). Further, courts have held that an Agency “need not renote changes that follow logically from or that reasonably develop the rules it proposed originally. Otherwise, the comment period is a perpetual exercise rather than a genuine interchange resulting in improved rules.” *Connecticut Light & Power Co. v. Nuclear Regulatory Com.*, 673 F.2d 525, 533 (D.C. Cir. 1982).

Members of the House of Representatives

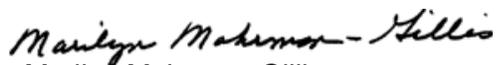
October 29, 2015

Page 2

The DOL should be allowed, without further pressure from Congress, to balance the need for any additional comment with the strong and urgent need to update its 40 year old rule to ensure that fiduciary-level advice is provided for tax-preferred retirement savings. For all these reasons, we urge you NOT to sign the letter to Secretary Perez.

Thank you for your consideration of our views.

Sincerely,



Marilyn Mohrman-Gillis
Managing Director, Public Policy
and Communications
CFP Board



Karen Nystrom
Director of Advocacy
FPA®



Geoffrey Brown, CAE
Chief Executive Officer
NAPFA