



July 13, 2015

The Honorable Thomas E. Perez
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave. NW
Washington, D.C. 20210

Dear Secretary Perez:

On behalf of the New Mexico Association of Commerce and Industry and the tens of thousands of employees we represent throughout the state of New Mexico, I offer my concerns regarding the Department of Labor's (DOL) proposal to change the definition of fiduciary investment advice under the Employee Retirement Income Security Act of 1974 (ERISA).

The proposed rule will only make it harder for individuals to get access to the products, services, and guidance they need. Of particular note is the rule's impact on access to sound, reliable guidance for individuals (especially transitioning employees) and retirement offerings by small employers—who as you know are central to New Mexico's economy.

Today's worker changes employers often. It is crucial that in such a time an employee is able to obtain reliable educational information on transitioning retirement plans, especially in an era when such plans and options are more numerous than ever, and rules are constantly evolving and changing. However, such a conversation with a trusted advisor—even without specific advice given—would be classified as personalized investment advice under the proposed definition. It is not difficult to imagine that this will only confuse employees, discourage these productive conversations, lead to errors and uninformed decisions, and unnecessarily deny employees the information they need and deserve.

ACI has received data indicating that individuals “who receive guidance on these interactions are three times less likely to cash out of their plans, and pay a penalty, which is almost always the worst outcome.” With premature withdrawals annually climbing into the hundreds of billions of dollars, we can all agree that tripling this negative impact on Americans—and our economy as a whole—is something we must avoid.

Further, this proposed definition threatens a substantial impact upon New Mexico's small businesses and the workers they employ. Data indicates that nearly half of small businesses without assistance in selecting investment options would be less likely to offer a plan to their employees. This is understandable, as most small business owners are not investment experts, and must rely on the services of advisors to help them understand their options. Nonetheless, the proposed definition substantially reduces small business' access to such services and education. The consequences are clear: fewer small employers—who account for over 95 percent of employers in New Mexico and the majority of the workforce—will be able to offer plans to their employees, resulting in reduced retirement savings and decreased financial preparedness for New Mexico's working population.



Additional costs and threats abound. The proposed rule would deny many individuals the opportunity to obtain guidance and adequately prepare for the future. The proposed rule would require a burdensome and prohibitive written agreement for practically any conversation—a requirement certain to reduce precisely the type of informative conversations we should be encouraging in these challenging financial times. The administrative costs alone—to advisors, small businesses, and individuals—of completing these agreements will place an undue strain on our state’s already embattled economy. Further, and perhaps most importantly, the proposed rule will have the outcome of further reducing and discouraging wise savings and investment decisions at a time when financial literacy and adequate preparation are key issues threatening the very lives, health, and futures of New Mexico’s citizens.

We strongly advise against finalizing the proposed rule until the concerns outlined above are addressed. The rule in question has already been proposed and withdrawn due to widespread and bipartisan concerns with its impact. The issues I have described above are of as significant concern to New Mexicans—and all Americans—today as they were in 2011. While the proposed rule’s ostensible goal of protecting investors is laudable, the reality of the proposal is that it will have the opposite of the intended effect. A balanced approach is possible that protects consumers while avoiding the negative consequences listed here.

Thank you for your consideration. We look forward to the opportunity to work with you to rectify these concerns and find a strong path forward. If you have any questions you may contact ACI at 505-842-0644.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason Espinoza', is written over a white background.

Jason Espinoza
President
New Mexico Association of Commerce and Industry

CC:
Senator Tom Udall
Senator Martin Heinrich
Representative Steve Pearce
Representative Ben-Ray Lujan
Representative Michelle Lujan-Grisham