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COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
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March 24, 2015

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

Dear Secretary Perez:

We again write to request information regarding the Department of Labor's (DOL) forthcoming rulemaking to expand fiduciary liability. As you know, the Committee is concerned with this initiative and its potential impact on workers and retirees. At a minimum, this rulemaking should be the product of coordination with the Securities and Exchange Commission (SEC).¹ Unfortunately, your recent correspondence has not assured us that meaningful coordination has taken place between these agencies.

On March 4, 2015, we wrote requesting "all communications after September 19, 2011, between DOL and SEC" regarding the DOL's fiduciary rulemaking.² We also requested "all documents and materials addressing how DOL has considered, adopted, or discarded any concerns raised by SEC as it revised its regulatory proposal." This information is essential as Congress examines policy changes by the administration that could reduce access to retirement savings options and increase costs for lower and middle-income Americans.

¹ On October 29, 2013, the House passed H.R. 2374, the *Retail Investor Protection Act*, legislation requiring DOL to delay its rulemaking until after the SEC pursues its own rulemaking under the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act). SEC Chair White announced on March 17 that SEC should go forward with its rulemaking. Mark Schoeff, Jr., *SEC's Mary Jo White Says Agency Will Develop Rules for Brokers*, INVESTMENT NEWS (Mar. 17, 2015), available at <http://www.investmentnews.com/article/20150317/FREE/150319919/secs-mary-jo-white-says-agency-will-develop-fiduciary-rule-for>. The *Retail Investor Protection Act* (H.R. 1090) was introduced in the 114th Congress on February 25, 2015.

² Letter from the Hon. John Kline, Chairman, H. Comm. on Education and the Workforce, and the Hon. Phil Roe, Chairman, H. Subcomm. on Health, Employment, Labor, and Pensions (HELP), to the Hon. Thomas E. Perez, Sec'y, Dep't of Labor (Mar. 4, 2015), available at http://edworkforce.house.gov/UploadedFiles/3-4-15-Secretary_Perez-Fiduciary_Liability.pdf.


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On March 16, 2015, DOL sent its response.³ Upon review, we find this letter to be generally unresponsive to our inquiry. The letter included a list of eight dates on which you communicated with SEC Chair White. However, no specific information regarding the content of these communications was provided. Additionally, it contained blanket declarations that SEC staff has provided technical assistance to DOL, but no substantive details about this technical assistance were provided. We are further concerned your letter was not accompanied by any e-mails, memoranda, notes, or other documents or communications as requested in our previous inquiry.


To our disappointment, when offered the opportunity during Wednesday's full committee hearing,⁴ you did not commit to delivery of these documents. DOL's lack of transparency in this matter is troubling.

Please provide the requested information no later than April 7, 2015. If you are unable to do so, please inform the Committee in writing why you cannot meet the deadline, and the date by which you will provide the requested information. If you have additional questions or comments, please contact Andy Banducci or Joe Wheeler of the Committee staff at (202) 225-7101.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



PHIL ROE, M.D.
Chairman
Subcommittee on Health, Employment,
Labor and Pensions

Enclosure

CC: The Honorable Robert C. Scott, Ranking Member, Committee on Education and the Workforce

³ Letter from Mr. Adri Jayaratne, Acting Asst. Sec'y, Office of Cong. and Intergovernmental Affairs, Dep't of Labor, to the Hon. John Kline, Chairman, H. Comm. on Education and the Workforce, and the Hon. Phil Roe, Chairman, H. Subcomm. on HELP (Mar. 16, 2015), available at http://edworkforce.house.gov/UploadedFiles/2015.03.16.DOL_ltr_to_EW.PDF.

⁴ *Reviewing the President's Fiscal Year 2016 Budget Proposal for the Department of Labor: Hearing Before the House Committee on Education and the Workforce* (Mar. 18, 2015).

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i. e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents should be delivered, one set to the Majority Staff in Room 2181 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.