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AND THE WORKFORCE
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June 2, 2015

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

Dear Secretary Perez:

We write, again, to request information regarding the Department of Labor's (DOL) proposed rulemaking to expand fiduciary liability. As you know from our previous inquiries, the Committee is concerned with the potential impact of this complex initiative on workers and retirees and believes any rulemaking on this matter should be the product of coordination with the Securities and Exchange Commission (SEC). Unfortunately, despite two previous inquiries, the Committee has yet to receive compelling evidence from DOL that meaningful coordination has taken place between DOL and the SEC.

On March 4, 2015, we wrote requesting "all communications after September 19, 2011, between DOL and SEC" demonstrating the coordination between the two agencies.¹ 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." DOL's March 16, 2015, response provided a list of eight dates on which you communicated with SEC Chair Mary Jo White, but it included none of the documents or communications requested in our inquiry.² In addition, when testifying at the Committee's March 18, 2015, hearing, you would not commit to delivery of the requested information.³

¹ 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.

² 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.

³ *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).

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On March 24, 2015, we wrote to reiterate our previous request.⁴ DOL refused to provide the requested materials.⁵ First, DOL argued because it had not yet published its proposed rulemaking at the time of its reply, it could not comply with the Committee's request. While the Committee disagrees with DOL's argument, the matter became moot two business days later when DOL released its revised notice of proposed rulemaking.⁶

Second, DOL argued providing a list of dates of your meetings with SEC Chair White, as well as declarative statements that DOL and SEC have coordinated, was sufficiently responsive to our inquiry. For the reasons articulated in our March 24, 2015 letter, we believe DOL's response has been inadequate, and we again request the content of all relevant communications between SEC and DOL.

Third, DOL refused to release the documents and other materials on the basis they are part of DOL's pre-decisional deliberative process. The Committee disagrees that documents can be shielded from Constitutionally-authorized Congressional oversight for this reason. Furthermore, the claim is particularly inappropriate in this case where the materials sought involve communications between different agencies. Indeed, the administration has specifically publicized its coordination with the SEC (including claims that SEC provided significant technical assistance) both in its responses to our earlier inquiries and in public relations information disseminated by the Department.⁷ It defies explanation that DOL would assert publicly that coordination with the SEC took place and yet refuse to release documents substantiating its assertion.

Please provide all documents and communications after September 19, 2011, between DOL and SEC relating to DOL's fiduciary rulemaking, including but not limited to all documents and materials addressing how DOL has considered, adopted, or discarded any concerns raised by SEC as DOL devised its fiduciary rulemaking **by no later than June 16, 2015**.

As an accommodation and intermediate step in the Committee's inquiry, please provide a log identifying each responsive but not yet produced document by author, recipients, date, subject

⁴ 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. 24, 2015), *available at* http://edworkforce.house.gov/uploadedfiles/3-24-15-secretary_perez-fiduciary_letter_follow_up.pdf.

⁵ 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 (Apr. 10, 2015), *available at* http://edworkforce.house.gov/uploadedfiles/dol_letter_re_coi2.pdf.

⁶ Press Release, Dep't of Labor, US Labor Department Seeks Public Comment on Proposal to Protect Consumers From Conflicts of Interest in Retirement Advice (Apr. 14, 2015), *available at* <http://www.dol.gov/opa/media/press/ebsa/EBSA20150655.htm>.

⁷ *See, e.g.*, Fact Sheet, Dep't of Labor, Department of Labor Proposes Rule to Address Conflicts of Interest in Retirement Advice, Saving Middle-Class Families Billions of Dollars Every Year, *available at* <http://www.dol.gov/protectyoursavings/FactSheetCOI.pdf> ("DOL has consulted extensively with the Securities and Exchange Commission (SEC) and other federal stakeholders.")

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line (if any), a summary of the content, and the asserted basis for refusing to provide it to the Committee (if any).

If you are unable to comply by June 16, 2015 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