

# United States Senate

WASHINGTON, DC 20510

August 2, 2013

The Honorable Sylvia Matthews Burwell  
Director  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

Dear Director Burwell:

We write with regard to the work the Securities Exchange Commission (SEC) is currently undertaking to implement Section 913 of the Dodd-Frank Act, and its intersection with the work the Department of Labor (DOL) is currently engaged in to redefine the term “fiduciary” under the Employee Retirement Income Security Act of 1974 (ERISA). We remain very concerned that uncoordinated efforts undertaken by the agencies could work at cross-purposes in a way that could limit investor access to education and increase costs for investors, most notably Main Street investors.

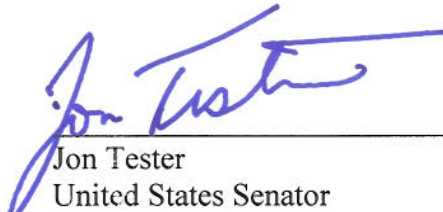
The fundamental purpose of Section 913 of the Dodd-Frank Act is to provide for the establishment of a uniform fiduciary standard that applies equally to Broker-Dealers and Registered Investment Advisors for the benefit of investors when personalized investment advice is provided. While it is unclear what the Department of Labor’s re-proposal in this area will look like, the Department’s 2010 proposal could have caused all Broker-Dealers that service Individual Retirement Accounts (IRAs) to be ERISA fiduciaries, which would have as a practical matter eliminated access to meaningful investment services for millions of IRA holders.


We believe that Congress clearly intended that a single standard should apply to retail accounts, including retirement accounts, based on the specific guidelines enumerated in Section 913. We are concerned that while the SEC is proceeding in accordance with its Congressional mandate, the DOL seems poised to issue a regulation that could directly conflict with the SEC’s work.


Given the Office of Management and Budget’s role in coordinating and streamlining Agency regulations, we write to make you aware of the potential conflict between these regulations. We would also encourage you to promote regulations that are workable and encourage, rather than limit professional investment education and guidance. We believe that, at a minimum, the Department of Labor should not issue final regulations in this area until the SEC has completed its work and that any regulation the DOL ultimately may propose should be carefully crafted so that it does not upend the SEC’s work.

We urge you to review any regulation proposed by the DOL to be sure it does not undermine the SEC's implementation of a fiduciary standard for the benefit of retail investors. We know that you share our goal of ensuring that any regulations issued in the area are consistent rather than working at cross-purposes and we look forward to working with you in furtherance of this goal.

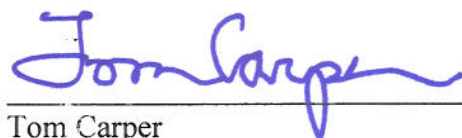
Sincerely,


  
\_\_\_\_\_  
Jon Tester  
United States Senator

  
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Mark Warner  
United States Senator

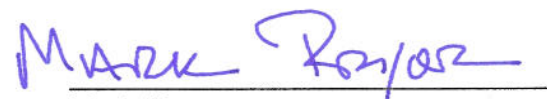
  
\_\_\_\_\_  
Claire McCaskill  
United States Senator


  
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Kay Hagan  
United States Senator

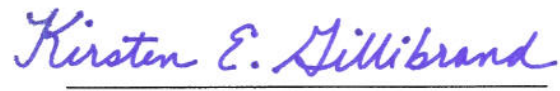
  
\_\_\_\_\_  
Tom Carper  
United States Senator

  
\_\_\_\_\_  
Amy Klobuchar  
United States Senator

  
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Mark Begich  
United States Senator

  
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Mark Pryor  
United States Senator

  
\_\_\_\_\_  
Ben Cardin  
United States Senator

  
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Kirsten Gillibrand  
United States Senator