Congress of the United States
Washington, DC 20510

June 2, 2016

The Honorable Thomas E. Perez
Secretary
United States Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Secretary Perez:

We want to follow up on our September 28, 2015, letter in which we expressed several concerns we had with the Department of Labor's then proposed fiduciary regulation. One specific issue raised in our letter concerned the proper treatment of annuities under the proposed rule.

In our previous letter, we urged for all annuities to be subject to the same exemption to the prohibited transaction rules. At the time, variable annuities were specifically singled out for disparate treatment, while fixed annuities, including fixed indexed annuities remained eligible to rely on prohibited transaction exemption (PTE) 84-24. We urged for the final regulations to allow ALL annuities to rely on PTE 84-24. We were disappointed to see that not only did the final regulations generally disregard our recommendation, but went in the opposite direction by subjecting fixed indexed annuities to the best interest contract exemption (BICE) that was generally designed for securities products.

This complete one hundred and eighty degree turn on the treatment of fixed indexed annuities in the final regulations raises questions as to whether the comment period garnered sufficient input on this subject for DOL to make an informed decision. It is unclear on what legal basis DOL determined it was proper to distinguish between types of fixed annuities. In fact, Congress affirmatively weighed in on this issue during the 2010 financial reform bill with the adoption of an amendment that effectively rebuffed a similar effort by the Securities and Exchange Commission to single out fixed indexed annuities from other fixed annuities.

Furthermore, the final rule appears to fail to take into consideration how BICE could be employed in a workable way within the fixed indexed annuity industry without completely disrupting their business model. Due to the legal obligations that arise as a result of BICE, there are legitimate concerns that fixed indexed annuities would no longer be offered by independent insurance agents to individual retirement account (IRA) holders and pension plan participants. Such a result would significantly reduce the options available to such individuals to protect against market volatility and longevity risk.

This is concerning to us because annuities play an important role for many Americans in ensuring a secure retirement. Annuities are often attractive for this purpose due to their unique ability to provide a guaranteed income stream that cannot be outlived. To ensure that annuities remain a viable option it is important to maintain a strong, robust, and competitive market for all annuity products. This includes fixed index annuities, which have become a popular tool for middle income Americans to protect their retirement savings. In fact, last year more than $53 billion of FIAs were purchased by American families, and more than a third were purchased from Iowa-based insurers.

We urge DOL to work with the fixed indexed annuity providers to fashion an additional PTE that would provide a workable solution that will protect the best interest of consumers while preserving the distribution network for these annuities.

We would appreciate receiving a response to our request that you meet with the fixed indexed annuity industry and discuss the parameters of an additional PTE. If you have any questions please contact Chris Conlin of Senator Grassley's staff at 202-224-3744.

Thank you for attention to this issue.

Sincerely,

Chuck Grassley

Charles E. Grassley
United States Senator

Joni K Ernst

Joni K. Ernst
United States Senator

David Young

David Young
Member of Congress

Dave Loebsack

Dave Loebsack
Member of Congress

Rod Blum

Rod L. Blum
Member of Congress

Steve King

Steven King
Member of Congress