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September 24, 2015

The Honorable Thomas Perez
Secretary
Department of Labor
Washington, DC 20002

Re: Conflict of Interest Rule, RIN 1210-AB32
Proposed Best Interest Contract Exemption, ZRIN: 1210-ZA25
Proposed Class Exemption for Principal Transactions in Certain Debt Securities between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs, ZRIN 1210-ZA25

Dear Secretary Perez:

I am writing to provide you with important information about financial conflicts of interest and other questions relating to editorial and substantive content of a study on the Department of Labor's (DOL) Conflict of Interest rule produced by Dr. Robert Litan and Dr. Hal Singer.[1]

On July 21, 2015, Dr. Litan testified before a Health, Education, Labor, and Pensions Committee (HELP) subcommittee hearing about recently proposed regulations from DOL designed to protect Americans' retirement savings.[2] Although many retirement advisers recommend investments that work best for the customer, some advisers and brokers recommend investments based on the free vacations, cars, bonuses, fees, and other kickbacks that the adviser can earn from selling a lousy product to the customer. Because of a loophole in the law, it's often perfectly legal for those advisers to push that lousy product. DOL's new rule is designed to plug that hole and ensure all advisers are working in the best interest of their clients.

Dr. Litan's testimony referenced a study he and Dr. Singer conducted which concluded that the proposed regulations could produce a net harm to consumers. Many found these

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[1] Robert Litan and Hal Singer, Economists Inc., *Good Intentions Gone Wrong: The Yet-to-Be Recognized Costs of the Department of Labor's Fiduciary Rule* (July 2015) (http://www.ei.com/wp-content/uploads/2015/07/LitanSingerFiduciary.pdf).

[2] Robert Litan, Testimony at Subcommittee on Employment and Workplace Safety (July 21, 2015).

conclusions surprising because they are wildly inconsistent with studies from the Council on Economic Advisors and the Department of Labor, and independent peer-reviewed academic studies which demonstrate that customers are currently losing billions of dollars annually in retirement savings because of bad investment advice that would be curtailed under this proposal.[3]

Members of the financial industry have prominently featured Dr. Litan and Dr. Singer's study in their public opposition to the DOL Conflict of Interest rule.[4] The study was highly critical of the DOL proposed rule, and Dr. Litan's testimony echoed these criticisms. The study and testimony also contained a broad – but vague - disclosure, stating that "funding for this study was provided by the Capital Group, which provides investment services worldwide."[5] Dr. Litan's testimony provided a similar disclosure, also noting that "Dr. Singer and I are solely responsible for the analysis and conclusions in the study."[6]

The Capital Group has been rhetorically supportive of a conflict of interest provision, but like other financial industry groups with a major stake in preserving the status quo, has been critical of key details in the proposal, claiming that it would "upend the market for personalized investment advice," that the "proposed best interest contract exemption does not hit the mark," and the DOL implementation timeline is "not practical."[7]

I was curious about the full extent of financial industry support for this study, so I asked Dr. Litan additional questions for the record following the hearing. In response, Dr. Litan provided the Committee with important information that bears directly on the credibility of his analysis.

First, Dr. Litan provided previously undisclosed specifics on the amount of the financial support of the Capital Group for his work. He told the Committee that the Capital Group commissioned Economists, Inc. to have Dr. Litan and Dr. Singer conduct the study stating that "Economists, Inc. was paid $85,000 for us to conduct the study" and further clarified that "my

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[3] Council on Economic Advisers, *The Effects of Conflicted Investment Advice on Retirement Savings* (February 2015) (https://www.whitehouse.gov/sites/default/files/docs/cea_coi_report_final.pdf); Mullainathan, Sendhil, Markus Noeth, and Antoinette Schoar. *The Market for Financial Advice: An Audit Study*, National Bureau of Economic Research Working Paper 17929. (2012.)

[4] See, *e.g.*, Testimony of Felicia Smith, Financial Services Roundtable, DOL Public Hearing on Proposed Fiduciary Rule (Aug. 10, 2015); ACLI, *Concerns about the Proposed Fiduciary Rule* (Sep. 2015) (https://www.acli.com/Issues/Fiduciary%20Rule/Documents/Concerns_about_Fiduciary_Reg_090215.pdf).

[5] Robert Litan and Hal Singer, Economists Inc., *Good Intentions Gone Wrong: The Yet-to-Be Recognized Costs of the Department of Labor's Fiduciary Rule* (July 2015) (http://www.ei.com/wp-content/uploads/2015/07/LitanSingerFiduciary.pdf).

[6] Robert Litan, Testimony at Subcommittee on Employment and Workplace Safety (July 21, 2015).

[7] The Capital Group, Comments on Proposed Conflict of Interest Rule (July 20, 2015) (http://www.dol.gov/ebsa/pdf/1210-AB32-2-00580.pdf).

personal share was $38,800."[8] Dr. Litan also stated that his work on the study was funded entirely by the Capital Group – and that no other entity provided financial support.[9]

I also asked Dr. Litan about whether the Capital Group provided guidance on the goals, content, or conclusions of the study. In response, he reasserted that "the conclusions are our own."[10] However, he also noted that "[t]he Capital Group provided us with feedback on our initial outline and some editorial comments, plus a few citations in the literature to follow up."[11]

The editorial input of the financial industry into Dr. Litan's work, the exact amount of the sizeable financial compensation associated with the study, and the work-for-hire nature of the Capital Group's commission for this work were not disclosed at the HELP hearing, and, so far as I can determine, have not previously been disclosed elsewhere. These disclosures are highly disturbing: the study was presented as objective academic research, but the financial and editorial arrangements raise significant questions about the impartiality of this study and its conclusions.

Approximately one week after Dr. Litan testified about his new study, other Brookings-affiliated researchers raised concerns about the findings of financial industry-funded work on the fiduciary rule – concerns that appeared to be directed at Dr. Litan's work. Jane Dokko, the policy director for the Brookings-affiliated Hamilton Project, wrote:

> To no surprise, those benefiting from current practices have paid for research to try to discredit the proposed rule. Such research claims that people don't lose as much money from biased advice as careful, independent research has shown. Research not funded by special interest groups concludes that when they are paid to recommend certain financial products over others, advisors tilt their recommendations so that they receive higher pay. ... Independent research must generally undergo an anonymous review process before publication. Studies funded by special interests need not face such scrutiny. When it is to their advantage, they may use analytic techniques that would not be accepted in academic research, draw inaccurate inferences, use inappropriate data, or selectively report the results.[12]

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[8] Robert Litan, Responses to Questions for the Record from Subcommittee on Employment and Workplace Safety (Aug. 2015).

[9] Robert Litan, Responses to Questions for the Record from Subcommittee on Employment and Workplace Safety (Aug. 2015).

[10] Robert Litan, Responses to Questions for the Record from Subcommittee on Employment and Workplace Safety (Aug. 2015).

[11] Robert Litan, Responses to Questions for the Record from Subcommittee on Employment and Workplace Safety (Aug. 2015).

[12] Jane Dokko, *Caveat Emptor: Watch Where Research on the Fiduciary Rule Comes From* (July 29, 2015) (http://www.brookings.edu/blogs/up-front/posts/2015/07/29-research-fiduciary-rule-comes-from).

I hope that as you review incoming comments on the Conflict of Interest rule, including any comments from Dr. Litan, Dr. Singer, the Capital Group, or any other comments that cite this work, you will make note of these troubling disclosures that indicate the nature of the industry's support for, and editorial input into, Dr. Litan's and Dr. Singer's study. Families and small investors deserve access to unbiased advice about their finances and financial decisions, and it is equally important that the Department of Labor also relies on unbiased input from experts and the public about the impact of the proposed Conflict of Interest rule. Based on the newly disclosed information, Dr. Litan's and Dr. Singer's highly compensated and editorially compromised work on behalf of an industry player seeking a specific conclusion does not appear to meet this standard.

Sincerely,

Elizabeth Warren
US Senator