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September 28, 2015

Strobe Talbott, President
Brookings Institution
1775 Massachusetts Ave, NW.
Washington, DC 20036

CC: Dr. Robert Litan

Dear President Talbott,

I am writing to request information regarding financial conflicts of interest and other questions relating to the editorial and substantive content of studies to which the Brookings Institution and its affiliates lend their names.[1] Brookings' stated mission is "to conduct high-quality, independent research and, based on that research, to provide innovative, practical recommendations."[2] However, the funding sources of some Brookings-affiliated researchers call into question the independence of their research and its conclusions.

In particular, I am concerned about financial conflicts of interest in a recent study authored by one of your Nonresident Senior Fellows, Dr. Robert Litan, whom you list on your website as a Brookings "expert in economic studies."[3] Dr. Litan testified before the Health, Education, Labor, and Pensions Committee (HELP), of which I am a member, on July 21, 2015. "Brookings Institution" was listed as Dr. Litan's affiliation in his written testimony and in the hearing announcement. Dr. Litan was also introduced to the Committee as a Nonresident Senior Fellow with the Brooking Institution.

Dr. Litan's testimony concerned recently proposed regulations from the Department of Labor designed to protect Americans' retirement savings. Although many retirement advisers recommend investments that work best for the customer, some advisers and brokers recommend

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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] The Brookings Institution, About Brookings (2015) (http://www.brookings.edu/about#research-programs/)

[3] The Brookings Institution, Robert E. Litan (2015) (http://www.brookings.edu/experts/litanr)

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.

In his testimony, Dr. Litan relied on a study he conducted which concluded that the proposed regulations, also known as the Conflict of Interest rule, could produce a net harm to consumers. Many have found these 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.[4]

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.[5]

Dr. Litan's study, which has been featured in the financial industry's comments and public opposition to the DOL regulation,[6] contained a broad – but vague – disclosure, stating that

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[4] 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).

[5] 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).

[6] 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)

"funding for this study was provided by the Capital Group, which provides investment services worldwide."[7] Dr. Litan's testimony provided a similar disclosure, while also noting that "Dr. Singer and I are solely responsible for the analysis and conclusions in the study."[8] 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 that the DOL implementation timeline is "not practical."[9]

I was curious about the full extent of financial industry support for this study, and 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 this analysis.

First, Dr. Litan provided specific details on the amount of financial support provided by 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 28 page study. Dr. Litan further clarified that "my personal share was $38,800."[10] Dr. Litan also noted that no other entity provided financial support for his work on the study – that it was funded entirely by the Capital Group.[11]

I also asked Dr. Litan 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."[12] However, he also noted that "The Capital Group provided us with feedback on our initial outline and some editorial comments, plus a few citations in the literature to follow up."[13] This statement appears to be inconsistent with Dr. Litan's testimony before the Senate that "Dr. Singer and I are solely responsible for the analysis" in the study.

(https://www.acli.com/Issues/Fiduciary%20Rule/Documents/Concerns_about_Fiduciary_Reg_090215.pdf).

[7] 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).

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

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

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

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

Neither the editorial input of the financial industry into Dr. Litan's and Dr. Singer's work nor the exact amount of and sole nature of the industry's financial support for this work were disclosed at the HELP hearing, and they have not previously been disclosed elsewhere. These disclosures are problematic: they raise significant questions about the impartiality of the study and its conclusions, and about why a Brookings-affiliated expert is allowed to use that affiliation to lend credibility to work that is both highly financially compensated and editorially compromised by an industry player seeking a specific conclusion, and has been implicitly criticized by the Institution's own in-house scholars as bought and paid-for research lacking in merit.

In order for me to fully understand Brookings' relationship with Dr. Litan and the Capital Group and the organization's policies for addressing conflicts of interest among affiliated experts, I ask that you provide me with the following information:

1. A copy of Brookings' policies regarding financial conflicts of interest for studies conducted by Brookings or Brookings-affiliated researchers.
2. A copy of Brookings' policies regarding editorial input from outside entities with a financial stake in the issues under consideration for studies published by Brookings or Brookings-affiliated researchers.
3. Any communications between Brookings employees or affiliated researchers and the Capital Group regarding the Capital Group's support for this and other studies or the Capital Group's editorial input into this and other studies.
4. Any communications between Brookings employees or affiliated researchers and Dr. Litan regarding the Capital Group's support for this and other studies or the Capital Group's editorial input into this and other studies.

Please contact Brian Cohen of my staff if you have any additional questions.

Sincerely,

Elizabeth Warren

Elizabeth Warren
US Senator