

United States Senate

WASHINGTON, DC 20510

May 19, 2017

The Honorable Alexander Acosta
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Acosta,

We are writing today to express our concern regarding your reported statements that it is now your number one priority to look for a way to freeze the Department of Labor's ("Department") conflict of interest rule and make it "stick."¹ As you are aware, the conflict of interest rule, which was finalized over a year ago, requires that individuals who are paid for providing retirement advice act in the best interests of their clients. An analysis conducted in conjunction with the rule found that conflicted advice costs retirement savers \$17 billion annually.²

Nonetheless on February 3, 2017, President Trump issued a Presidential Memorandum that required DOL to prepare an updated "economic and legal analysis" on the impact of the rule in certain specified areas.³ While we find this action utterly without merit given the detailed analyses conducted in the course of the rulemaking, the President and the Department apparently did recognize that they lacked the authority to otherwise stop or freeze the rule through executive action.

You were asked during your confirmation hearing about your plans for the conflict of interest rule, and you stated that you would follow the "executive orders of the President who would be [your] boss."⁴ Further, in response to questions for the record related to your confirmation hearing, you stated that "[i]f confirmed, I will conduct a review in accordance with the Presidential Memorandum."⁵ However, last week you reportedly indicated that freezing the conflict of interest rule is now your number one priority, and you recognized the urgency of the situation and are in constant communication with the White House.⁶

The definitiveness of your statements, after merely three weeks as Secretary, gives us reason for serious concern. Instead of meeting with all stakeholders and considering multiple points of view, you appear to have prejudged the outcome of the review your agency was tasked with conducting. In fact, it seems as though you have already arrived at your decision.

¹ "Acosta Looking to Freeze DOL Fiduciary Regulation," NAPA Net, May 10, 2017, <http://www.napa-net.org/news/technical-competence/regulatory-agencies/acosta-looking-to-freeze-dol-fiduciary-regulation/>.

² Executive Office of the President, Council of Economic Advisers, "The Effects of Conflicted Investment Advice on Retirement Savings" 2 (Feb. 2015).

³ Presidential Memorandum on Fiduciary Duty Rule, 82 Fed. Reg. 9,675 (Feb. 3, 2017).

⁴ Transcript of *Hearing on the Nomination of Alex Acosta To Be Sec'y of Labor: Hearing Before the Sen. Comm. on Health, Educ., Labor and Pensions*, 115th Cong. (Mar. 22, 2017).

⁵ Responses to Questions for the Record from Alexander Acosta, Sec'y, Dep't of Labor, to Patty Murray, U.S. Senator, Q&A #89 (Mar. 22, 2017) (on file with Sen. Murray's office).

⁶ "Acosta Looking to Freeze DOL Fiduciary Regulation," *supra* note 1.

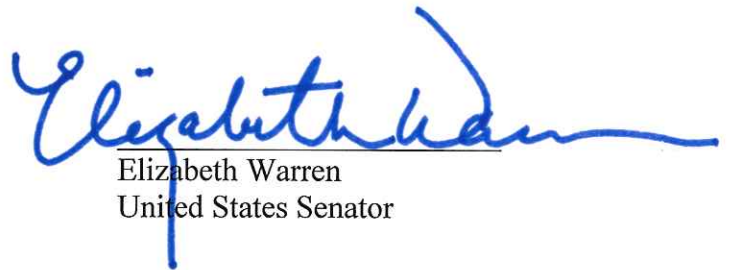
During your confirmation process, you routinely reminded Senators that your primary loyalty is to the law. Yet, stating your preference to freeze the conflict of interest rule prior to the conclusion of the analysis required in the Memorandum seems to be in conflict with your prior statements. You no doubt are aware of the steep legal standards the Department must overcome to justify further delaying, substantially revising, or rescinding this rule.⁷

We urge you to demonstrate your commitment to America's retirement savers and allow the rule and the consumer protections and savings contained therein to take effect next month.

Sincerely,



Patty Murray
United States Senator



Elizabeth Warren
United States Senator



Cory A. Booker
United States Senator

⁷ See, e.g., *Motor Vehicle Mfrs. Assoc. v. State Farm Ins.*, 463 U.S. 29, 42 (1983) (“An agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance.”). See also *FCC v. Fox Television Stations*, 129 S. Ct. 1800 (2009).