



**NASS**  
National Association  
of Secretaries of State



**AARP**



April 23, 2010

Dear Senator:

Before the Restoring America's Financial Stability Act was reported out of the Banking Committee last month, the bill's single most important provision to benefit average investors was weakened. However, you have an opportunity to strengthen the bill and restore vital investor protection provisions by co-sponsoring an amendment by your colleagues, Sens. Daniel Akaka and Robert Menendez.

The Akaka-Menendez amendment would replace language calling for a study of investment adviser regulation with a measure approved by the House requiring the Securities and Exchange Commission to adopt rules under the Securities and Exchange Act to require brokers to act in the best interests of their customers when giving personalized investment advice to retail customers.

The study language, which would delay reform for several years, replaced a stronger provision that would have required brokers and insurance agents to act in the best interests of customers when recommending securities. As currently written, the legislation requires the SEC to study and then adopt rules to address "gaps and overlaps" in regulatory requirements for brokers and advisers, but it denies the agency the authority it needs to raise the standards that apply to brokers when they give investment advice to match those that apply to investment advisers providing the same service.

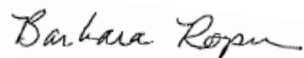
Brokers and insurance agents who sell securities routinely market themselves to investors based on the "advice" they offer and use titles, such as "financial adviser," designed to encourage investors to believe they are in a relationship of trust. Under current law, however, brokers and insurance agents don't have the same legal responsibilities to act in the best interests of their clients as investment advisers do, and they sometimes abuse that relationship of trust. Research has shown that investors do not understand the differences between brokers and advisers and rely heavily on the recommendations they receive, making them vulnerable to sales pitches misrepresented as objective advice. In the best of times, the middle income Americans who are most vulnerable to these deceptive sales tactics can ill afford the high costs that they pay as a result, making reform in this area a long-time priority for investor advocates. As investors seek to recover from the devastating losses they suffered in the recent financial crisis, the need for action to address this problem is even more urgent.

Unfortunately, some in the insurance industry and brokerage firms would prefer to maintain the status quo in which they are free to portray themselves to investors as advisers without having to meet the standards appropriate to that role. They particularly objected to the initial approach taken in the Senate bill, which would have regulated investment advice by brokers and insurance agents under the Investment Advisers Act. The House bill took a different approach to achieve the same end, requiring the SEC to adopt rules under the Securities and Exchange Act to require brokers to act in the best interests of their customers when giving personalized investment advice to retail customers. The language in the current bill may be no better than the status quo, and will not serve to protect investors from biased investment advice. It wastes SEC time and resources studying issues that have been studied extensively, and does not provide the agency any authority to address a known disparity in the protections that apply when brokers give investment advice, delaying indefinitely any actions to address this pressing concern.

Sen. Akaka and Sen. Menendez drafted an amendment to replace the current provision of the bill with the language that has already passed the House. This approach has won broad support from a variety of groups in addition to our organizations as well as from SEC Chairman Mary Schapiro.

We urge you to sign on as co-sponsors of the Akaka/Menendez fiduciary duty amendment to ensure that vital protections for Main Street investors are not left on the cutting room floor in the legislation to reform our financial system.

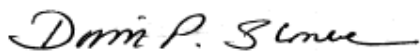
Respectfully Submitted,



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