United States Senate
WASHINGTON, DC 20510

November 19, 2015

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

Dear Secretary Perez:

We write today to encourage the Department of Labor to take action by issuing guidance as soon as possible to address plan leakage, facilitate portability, and promote the consolidation of small retirement accounts.

The Employee Benefit Research Institute (EBRI) estimates that 10 million 401(k) participants change jobs each year, of which 3.4 million have balances below $5,000 in their 401(k) plan at the time they change their jobs. Further, the Plan Sponsor Council of America found that more than 40 percent of those participants prematurely cash out their retirement savings when they change their jobs. Additionally participants may be subject to additional taxes on such cash outs.

According to a GAO study, cashing out of 401(k) accounts when an individual separates from a job has a significant and negative impact on that individual's retirement readiness. This form of leakage can have a great impact on an individual's ability to save adequately for retirement, especially among low-wage workers.

EBRI has estimated that reducing leakage by 50 percent would increase retirement savings by $1.3 trillion over a 10-year period – certainly a goal we can all support. Given the current law in this area as described below, it does not appear that there are any existing legal barriers standing in the Department's way to facilitate the use of automatic portability permitting the automatic transfer of an individual's 401(k) account with a balance below $5,000 from a former employer via electronic transfer to a safe harbor account and then another seamless electronic transfer to the individual's 401(k) plan at a new employer. We believe this type of automation with negative consent - where an individual must actively opt out - would reduce leakage and ultimately increase retirement savings. This small, automated action can effect a desired, positive result, and the Department should encourage such innovations to improve retirement savings and address the growing retirement crisis in this country. We encourage EBSA to work to ensure that the use of automatic portability and negative consent is prudent, and that any fees associated with such process are reasonable in its opinion.

The concepts of automation and negative consent are not new with respect to cash outs. Under current law, plan sponsors may automatically cash out 401(k) account balances of terminated participants without their consent if the vested, accrued account balance is $5,000 or less. Current law also allows plans to automatically roll over these cash outs to an IRA unless the participant makes an election to take the cash or make a different direct rollover provided the vested, accrued account balance is more than $1,000, but less than or equal to $5,000.

Accordingly, we respectfully request that you encourage the Employee Benefits Security Administration to issue guidance as soon as possible that would provide clarity to both employers and financial companies regarding the use of automatic portability and negative consent in their quest to reduce leakage, eliminate lost plans, and ultimately increase retirement savings.

Sincerely,

Patty Murray
Senator Patty Murray

Bobby Scott
Representative Robert C. "Bobby" Scott

Ron Wyden
Senator Ron Wyden

Representative Sander M. Levin

Barbara A. Mikulski
Senator Barbara A. Mikulski

Alma Adams
Representative Alma S. Adams, Ph. D

Senator Claire McCaskill

Al Franken
Senator Al Franken

Senator Sheldon Whitehouse

Senator Elizabeth Warren

Senator Christopher Murphy