

Congress of the United States
Washington, D.C. 20515

July 2, 2020

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

Dear Secretary Scalia:

We write to request that the comment period be extended for the Department of Labor's (DOL's) recently proposed rule entitled "Improving Investment Advice for Workers and Retirees."¹ Contrary to its name, the proposed rule does not require financial advisors to abide by a fiduciary standard when providing retirement investment advice. Unscrupulous advisors could still prioritize their financial interests and profit motives over that of their clients' retirement interests.

The DOL only provided 30 days to submit comments on the proposed rule, an insufficient time for the American public to review and respond to a complex, 123-page proposed rule. Specifically, the proposed rule requires familiarity with the U.S. Securities and Exchange Commission's (SEC's) 770-page "Regulation Best Interest: The Broker-Dealer Standard of Conduct,"² and significantly impacts the retirement savings landscape for advisers and retirement savers alike. The DOL owes it to the public to take the time to meaningfully engage with people about their concerns rather than rushing through a rule that would seriously damage the retirement security of people across the country. During the middle of a pandemic, when people across the country are grappling with severe economic and health challenges, it is as important as ever for the DOL not to arbitrarily and unfairly rush through this process.

The comment period for this proposal is also far shorter than what DOL provided during its prior fiduciary rule proposals. In 2010, the DOL issued a proposed fiduciary rule and initially provided a 90-day comment period.³ However, the DOL extended it for two additional weeks so as to give the public a total of 104 days to comment on the proposed fiduciary rule.⁴ At the time, the DOL noted that it would "ensure that all interested parties have the opportunity to prepare and submit comments."⁵

When the DOL revised and re-proposed its fiduciary rule in April 2015, it initially provided a 75-day comment period.⁶ In response, certain elected officials, business groups, and others weighed in and requested an extension. Dozens of U.S. Senate Republicans wrote to the DOL, stating that 75 days

¹ "Department of Labor, "Improving Investment Advice for Workers and Retirees," ZRIN 1210-ZA29 (June 29, 2020), <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/proposed-regulations/investment-advice-fiduciaries/improving-investment-advice-for-workers-and-retirees.pdf>

² Regulation Best Interest: The Broker-Dealer Rule, 17 C.F.R § 240 (2019).

³ Dep't of Labor, "Definition of the Term 'Fiduciary,'" 75 Fed. Reg. 204 (Oct. 22, 2010).

⁴ Dep't of Labor, "US Department of Labor Announces a Public Hearing on Proposed Definition of Fiduciary Regulation," (December 2010), available at <https://www.dol.gov/newsroom/releases/ebsa/ebsa20101222-0>.

⁵ *Id.*

⁶ Definition of the Term 'Fiduciary,' 80 Fed. Reg. 21,928 (Apr. 20, 2015) (to be codified at 29 C.F.R. Pts. 2509, 2510).

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was “not an appropriate amount of time.”⁷ The Senators asked the DOL to extend the comment period to 120 days “in order to afford consumers and stakeholders the best chance to thoroughly review the rule and provide informed opinions and comment.”⁸ They were not alone.

Several business groups and financial services-related associations also wrote to the DOL, requesting a 45-day extension.⁹ They argued that “the 75-day comment period does not provide adequate time for the Associations and their respective members to determine whether they can effectively service the needs of retirement investors within the framework presented in the Proposal.”¹⁰ The DOL again agreed to extend its fiduciary rule comment period, providing a total of 90 days.¹¹

As the Obama Administration twice respected the requests of those who asked that the fiduciary rule comment periods be extended, we call on this Administration to do the same. At a minimum, we request the DOL provide an additional 60 days so as to give the public a more appropriate amount of time to consider the impact of such a significant proposal and better align this comment period with past precedents.

If you have questions, please feel free to contact us or Kevin McDermott, Senior Labor Policy Advisor for the House Committee on Education and Labor, at (202) 225-3725 or kevin.mcdermott@mail.house.gov and Kendra Isaacson, Senior Pensions Counsel for the Senate Committee on Health, Education, Labor, and Pensions, at (202) 224-6572 or kendra_isaacson@help.senate.gov.

Thank you for your attention. We look forward to your response.

Sincerely,



Robert C. “Bobby” Scott
Chairman
House Committee on Education and Labor



Patty Murray
Ranking Member
Senate Committee on Health, Education,
Labor, and Pensions

⁷ Press Release, Senator Alexander, 36 Senate Republicans Urge Labor Department to Give Public More Time to Weigh in on Proposed Rule that Could Restrict Access to Retirement Advice, (May 13, 2015) (on file with author) <https://www.alexander.senate.gov/public/index.cfm/2015/5/36-republicans-urge-labor-department-to-give-public-more-time-to-weigh-in-on-proposed-rule-that-could-restrict-access-to-retirement-advice>.

⁸*Id.*

⁹ *E.g.*, Letter from U.S. Chamber of Commerce to Phyllis Borzi, Assistant Secretary for Employee Benefits Security, (Apr. 24, 2015) (on file with author), https://www.uschamber.com/sites/default/files/2015_4.24_dol_fiduciary_extension_request.pdf (requesting 45-day extension for a total 120-day comment period and also representing the interests of Secretary Scalia’s client in the case that resulted in vacating the 2015 iteration of the fiduciary rule).

¹⁰ Letter from Financial Services Roundtable et al., to the Employee Benefits Security Administration, (Apr. 21, 2015) (on file with author), <http://op.bna.com.s3.amazonaws.com/pen.nsf/t%3FOpen%3dsfos-9vtr26>.

¹¹ Cyril Tuohy, *DOL Releases Transcript from Fiduciary Rule Hearing*, Insurance News Net (Sept. 9, 2015), <https://insurancenewsnet.com/innarticle/dol-releases-transcript-from-fiduciary-rule-public-hearing>.