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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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July 14, 2020

Jeanne Klinefelter Wilson
Acting Assistant Secretary
Employee Benefits Security Administration
United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Improving Investment Advice for Workers and Retirees (ZRIN 1210-ZA29)

Dear Acting Assistant Secretary Wilson:

I write to request a public hearing on the Department of Labor's (the "Department") recently proposed prohibited transaction exemption ("PTE") entitled, "Improving Investment Advice for Workers and Retirees."¹ In 2015, the Department held four days of public hearings featuring testimony from over 80 different stakeholders.² Given the significance of this proposed rule and the fact the proposed PTE relies heavily on the Securities and Exchange Commission's (SEC) Regulation Best Interest,³ the Department, as it has in the past, should formally engage and seek input from the public. To ensure the Department achieves its stated goal of "promoting regulatory efficiencies,"⁴ it should consider a tripartite hearing that would also include the SEC to ensure that both agencies and all affected stakeholders are on the same page. These rules are too important to take shortcuts. A public hearing is critical to a thorough understanding in light of the reliance on another federal agency's regulation, as well as the numerous proposals and changes the Department has made over the past month in delineating ERISA's fiduciary duties.

I also reiterate my previous request that the Department extend the 30-day comment period by an additional 60 days as the current comment period is inadequate to provide thoughtful analysis. As the Financial Services Roundtable explained in 2015 when asking for a 120-day comment period, "[t]he complexity of the PTE regime. . . will require considerable time and resources. . . in

¹ Dep't of Labor, "Improving Investment Advice for Workers and Retirees," 85 FR 40834 (July 6, 2020), available at <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 Dep't of Labor, "Public Hearing Agenda: Conflict of Interest – Definition of Fiduciary Investment Advice," available at <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/proposed-regulations/1210-AB32-2/hearing-agenda>.

³ Sec. & Exch. Comm'n, Regulation Best Interest: The Broker-Dealer Rule, 17 C.F.R. § 240 (2019).

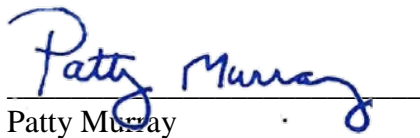
⁴ "Improving Investment Advice for Workers and Retirees" at 9.

order to participate fully in the public comment process.”⁵ It would already be unacceptably difficult for the public to review this PTE thoroughly in the time provided; however, stakeholders face the added difficulty of reconciling the proposed PTE with the Department’s recent information letters,⁶ as well as a proposal on Financial Factors in Selecting Plan Investments,⁷ all of which were released in the past month.

If you have questions, please contact Kendra Isaacson, Senior Pensions Counsel for the Senate HELP Committee at (202) 224-6572.

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

Sincerely,

A handwritten signature in blue ink that reads "Patty Murray". The signature is written in a cursive style and is positioned above a horizontal line.

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

⁵ Letter from Financial Services Roundtable to Employee Benefits Security Administration (Apr. 28, 2015), available at <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00010.pdf>.

⁶ See Dep’t of Labor, Information Letter to Jon Breyfogle (June 3, 2020).

⁷ Dep’t of Labor, “Financial Factors in Selecting Plan Investments,” 85 FR 39113 (June 6, 2020).