

December 4, 2023

The Honorable Lisa Gomez
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: Retirement Security Rule
Docket ID: EBSA–2023–0014

Dear Assistant Secretary Gomez:

We write to urge the Department to reconsider its decision not to extend the comment period for the proposed “Retirement Security Rule: Definition of an Investment Advice Fiduciary” (the “Proposal”) or to reschedule the hearing until after the close of the comment period. We are concerned that the Department’s timeline does not afford the regulated community sufficient time to study, understand, or react to the Proposal. We ask that the Department consider extending the comment deadline for at least 30 days and rescheduling the hearing for a date after the close of the comment period.

The Proposal is a sweeping regulatory overhaul that would change how much of the retirement services industry interacts with retirement plans, participants, and IRA owners. It seeks to convert many non-fiduciary communications into fiduciary “investment advice” subject to the rules and restrictions under Title I of ERISA and section 4975 of the Internal Revenue Code. People may debate whether the benefits of the Proposal justify the costs, but there is no question that the Proposal, if finalized, would have a profound impact on the retirement system.

Despite the potential impact of the Proposal and the risk of unintended consequences, the Department has provided a mere 60-day comment period. This is significantly shorter than the comment periods in 2010 (104 days) and 2015 (90 days). In our view, 60 days is simply not a sufficient amount of time for interested parties to comment on the Proposal, particularly when the comment period is held during a time of year when people have significant familial and religious obligations.

The Department received a number of requests to extend the comment deadline, but the Department denied those requests because it “believes that its current proposal reflects significant input it has received from public engagement with this project since 2010.” We have no doubt the Proposal incorporates ideas and concepts the Department learned in discussions with stakeholders over the past 13 years, but the Proposal has material, technical differences from the 2016 rule, even if it reflects many of the same policies. Moreover, there have been

major changes to the regulatory landscape since 2016 (*e.g.*, the NAIC model law for annuity sales and the SEC's Regulation Best Interest), and those changes create new issues and considerations.

The Department also made the unprecedented decision to hold a hearing on the rule three weeks before the close of the comment period. The Department's justification is that "the testimony [at the hearing] will inform the comments EBSA receives." However, the purpose of a hearing is not to inform the comment letters; it is to provide a forum for the agency to engage with commenters to help deepen the Department's understanding of the issues. A hearing would have considerably more utility if it is held after the Department and those testifying have the opportunity to carefully review written comments.

We can certainly understand the Department's desire to advance its regulatory priorities, but there is no statutory or other deadline that would necessitate such an accelerated and unorthodox notice and comment process. In fact, the process puts the Department at risk of regulating without the benefit of thoughtful and considered stakeholder feedback, and it contributes to a deepening skepticism within the regulated community about the Department's objectivity and the legitimacy of the regulatory process.

Given the foregoing, we respectfully urge the Department to extend the comment deadline for *at least* 30 days and to reschedule the hearing for a date after the close of the comment period. We appreciate your consideration of this request and would be pleased to discuss it at any time.

Sincerely,



Michael Kreps
Chair
Retirement Services

cc: Ali Khawar, Principal Deputy Assistant Secretary, EBSA
Timothy Hauser, Deputy Assistant Secretary for Program Operations, EBSA