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July 9, 2020

Mr. Joe Canary, Director
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Financial Factors in Selecting Plan Investments
Proposed Regulation (RIN 1210-AB95)

Submitted electronically to www.regulations.gov

Dear Director Canary,

Public Citizen writes as an ERISA plan sponsor to request an extension of the comment period from 30 days to 120 days for public comments on the notice of proposed rulemaking entitled “Financial Factors in Selecting Plan Investments” (RIN 1210-AB95). The Employee Benefits Security Administration (“EBSA”) announced its proposed regulation on June 23, 2020.

A 30- day comment period is too short for plan sponsors to review and comment on this rulemaking, especially given that so many have had to make functional adjustments to adapt to the coronavirus pandemic. Executive Order 12866 clearly stipulates that comment periods should be no shorter than 60 days at a minimum. Doubling that time period during the COVID-19 pandemic to 120 days is necessary to allow for the public and plan sponsors to have adequate time to comment in an informed and substantive manner.

The proposed rule states that the Department of Labor issued its first interpretive guidance on this topic in 1994. Given that the topic up for consideration has been the subject of longstanding EBSA guidance, rushing to finish a rulemaking now, especially with so many plan sponsors focused on adapting their services to meet the needs of the current crisis, is not advisable.

In addition to extending the comment period we also request that the EBSA schedule a virtual public hearing to provide an opportunity to hear directly from impacted stakeholders. Plan

sponsors and the public deserve an opportunity to thoroughly evaluate this proposed rule. That will not be feasible under the present circumstances unless stakeholders are provided a more reasonable time for review of the proposal and for submission of comments. Therefore, Public Citizen respectfully requests that the EBSA extend the comment period for this proposed rule from 30 days to 120 days and schedule a public hearing.

Thank you for reviewing Public Citizen's request. If you have any further questions, do not hesitate to contact Rachel Curley, Democracy Advocate at 202-454-5195 or rcurley@citizen.org.

Sincerely,

A handwritten signature in black ink, appearing to be 'RC', with a long horizontal flourish extending to the right.

Rachel Curley
Democracy Advocate
Public Citizen's Congress Watch