

July 22, 2020

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

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

Office of Exemption Determinations
Application No. D-12011
U.S. Department of Labor, EBSA
Office of Exemption Determinations
200 Constitution Avenue, NW
Suite 400
Washington, DC 20210

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

Dear Acting Assistant Secretary Wilson and Director Canary:

CFA Institute is a global, not-for-profit professional association with more than 80,000 U.S.-based investment analysts, advisers, portfolio managers, and other investment professionals affiliated with our 67 CFA local societies in the United States.¹ We are writing to respectfully request an extension of the comment period to, at minimum, 60 days, from 30 days provided, and the scheduling of a public hearing on the Department of Labor's (the "Department") notice of proposed rulemaking entitled "Improving Investment Advice for Workers and Retirees" (the "Proposal").²

CFA Institute focuses on issues affecting the profession of financial analysis, including retirement investment management, education and competencies for investment professionals, and on issues of fairness, transparency and accountability of financial markets. Indeed, it is this perspective and experience that we brought to the discussion during the Department's 2015 hearing on "Conflicts of Interest – Definition of Fiduciary Investment Advice."³ We further respectfully request the opportunity to present our views at a public hearing on the Proposal.

¹ CFA Institute membership includes nearly 185,000 investment analysts, advisers, portfolio managers, and other investment professionals in 165 countries, of whom more than 178,000 hold the Chartered Financial Analyst® (CFA®) designation. CFA Institute membership also includes 157 member societies in 77 countries and territories.

² Department of Labor, "Improving Investment Advice for Workers and Retirees," 85 FR 40834 (July 7, 2020).

³ Linda L. Rittenhouse, Department of Labor, "Public Hearing Agenda: Conflict of Interest – Definition of Fiduciary Investment Advice," available at <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/written-testimony-33.pdf>

As we review the Proposal, we believe it marks a significant step in the Department's long history of examining the regulation of retirement investment advice and fiduciary duties and, indeed, an important change affecting the retirement investment advice industry and thousands of retirement savers. We note the Department last held a public hearing on the matter in 2015. Since then, as the Proposal acknowledges, the regulatory landscape has changed. An extended comment period and a public hearing would allow commenters like CFA Institute to better understand the Department's objectives and how they coordinate or conflict with other Department rules or rules of other government agencies. It also will allow the Department to better understand the changing marketplace and the commenters' views on the Proposal.

In this regard, we believe the Proposal introduces an additional layer to an already complex regulatory framework by seeking to adopt major elements of another federal agency's rule, the Securities and Exchange Commission's Regulation Best Interest ("Reg. BI"). Reg. BI took effect less than one month ago, and the Proposal was introduced just seven days after its effective date. An extension of the comment period and a scheduling of a public hearing will provide the public the opportunity to present initial observations of Reg. BI implementation and, critically, meaningful input about the myriad issues raised in the Proposal and the interplay between Reg. BI and the Proposal as it pertains to fiduciary duties under ERISA.

Finally, we note that in satisfying both requests, the Department would meet its obligations under the Administrative Procedures Act, which suggests that matters of "great importance, or those where the public submission of facts will be either useful to the agency or a protection to the public, should naturally be accorded more elaborate public procedures."⁴ Such a move would also be consistent with Executive Order 12866 and Executive Order 13563, both of which state that comment periods "should generally be at least 60 days."⁵

Thank you for considering our views and our requests. Should you have any questions, please do not hesitate to contact James C. Allen, CFA, at james.allen@cfainstitute.org or 434.227.1338, or Karina Karakulova, at karina.karakulova@cfainstitute.org.

Sincerely,

/s/ James C. Allen

James C. Allen, CFA
Head
Capital Markets Policy – Americas
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/s/ Karina Karakulova

Karina Karakulova
Sr. Manager
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⁴ Administrative Procedure Act: Legislative History, S. Doc. No. 248, at 259 (1946).

⁵ Exec. Order No.12,866, 58 FR 51735 (October 4, 1993); Exec. Order No.13563, 76 FR 3821 (January 21, 2011).