



November 6, 2023

By electronic submission via www.regulations.gov

The Honorable Lisa Gomez
Assistant Secretary
Employee Benefits Security Administration
Department of Labor
200 Constitution Ave, NW
Washington, D.C. 20210

cc: Luisa Grillo-Chope, Office of Regulations and Interpretations
Susan Wilker, Office of Exemption Determinations

Re: Request for Extension: Retirement Security Rule: Definition of an Investment Advice Fiduciary (RIN 1210-AC02)

Dear Assistant Secretary Gomez:

We write on behalf of the Insurance Coalition (the “Coalition”), a group of insurance companies that share a common interest in federal laws and regulations impacting the industry. The group was formed during congressional negotiations on the Dodd-Frank Act and continues to represent a diverse cross-section of life and property and casualty insurance companies.

We write today because many Insurance Coalition members are impacted by the Department of Labor’s (the “Department”) proposed “Retirement Security Rule: Definition of an Investment Advice Fiduciary” (“Proposal”). While we support the Employee Benefit Security Administration’s (“EBSA”) goal of protecting retirement investors, the Proposal is a significant departure from current law and will require the members of our Coalition to navigate a myriad of federal regulations and state laws, which affect the members of the Coalition in different ways. Given the complexity and importance of this issue, we are writing to request an extension of at least thirty days beyond the current comment period, which is currently scheduled to end on January 2, 2024.

We are committed on behalf of our members and the entire insurance industry to provide as thoughtful, productive, and detailed a response to the Proposal as possible. Because of that commitment, we believe that the current comment period does not provide sufficient time to prepare such a response. Moreover, there is precedent for at least a 90-day comment period for such a proposal.

When the Department first proposed a fiduciary rule in 2010, the Department provided a 90-day comment period.¹ The Department then extended the comment period by two weeks for a 104-day comment period.² For that iteration of the rule, the Department also gave stakeholders five

¹ Dep’t of Labor, “Definition of the Term ‘Fiduciary,’” 75 Fed. Reg. 204 (Oct. 22, 2010).

² Dep’t of Labor, “US Department of Labor Announces a Public Hearing on Proposed Definition of Fiduciary Regulation,” (Dec. 2010), <https://www.dol.gov/newsroom/releases/ebsa/ebsa20101222-0>.



months to prepare for a hearing.³ As such, we also respectfully request that the public hearing take place after the comment period has closed to provide interested parties ample time to prepare their testimony.

The second iteration of the fiduciary rule was proposed in 2015, and stakeholders were provided an initial 75-day comment period⁴ that was later extended by 15 days⁵ for a 90-day comment period. In that instance, the Department held four days of public hearings approximately a month after the close of the comment period.⁶

Finally, the Department has requested stakeholders provide comments on specific portions of the Proposal (including the proposed amendments to the various prohibited transaction exemptions) over 180 times. The Department has steadily been working on this rule for over a decade, but specific to this effort, the Department signaled that it began rewriting the rule in 2021.⁷ The Department spent at least two years on this rewrite and still has almost 200 questions for stakeholder input. In just two months that include a number of national and significant religious holidays, stakeholders are expected to grapple with and respond to this Proposal. The public cannot be expected in such a brief time to digest the considerable changes the Proposal would make to a complex industry and determine responses to the Department's numerous outstanding questions even after their multi-year effort. Stakeholders need sufficient time to engage in a comprehensive, multidisciplinary, and deliberative process over these numerous critical questions in order to provide thoughtful responses. The Proposal not only makes significant changes to rules relating to the provision of investment advice, but it interacts with other regulatory schemes outside of the jurisdiction of the Department as well as other pending rulemaking proposals from the Department. Without sufficient time, it would appear the Department is not interested in meaningful responses to these questions.

Therefore, we respectfully request at least an additional thirty days beyond the current deadline of January 2, 2024, to submit comments, and to reschedule the public hearing at least one month after the conclusion of the extended comment period. Thank you for your consideration of our request. We greatly appreciate the opportunity to engage on the proposed rule and look forward to a continued dialogue.

Sincerely,

Kendra Isaacson, The Insurance Coalition

³ See <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32#comments>.

⁴ Dep't of Labor, "Definition of the Term 'Fiduciary,'" 80 Fed. Reg. 21,928 (Apr. 20, 2015).

⁵ Mark Schoeff, "DOL extends comment period on fiduciary duty proposal," Investment News (May 15, 2015), <http://www.investmentnews.com/article/20150515/FREE/150519925/dol-extends-comment-period-on-fiduciary-duty-proposal>.

⁶ Dep't of Labor, "Public Hearing Agenda: Conflict of Interest – Definition of Fiduciary Investment Advice," (Aug. 10-13, 2015), <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/proposed-regulations/1210-AB32-2/hearing-agenda>.

⁷ Eversheds Sutherland, "DOL Fiduciary Rule 3.0: The sprint to December 20," (Sept. 7, 2021), <https://us.eversheds-sutherland.com/NewsCommentary/Legal-Alerts/244824/DOL-Fiduciary-Rule-30The-sprint-to-December-20> (noting that "[i]n DOL's most recent regulatory agenda, proposed Rule 4.0 was slotted for December 2021").