

United States Senate

WASHINGTON, DC 20510

December 20, 2023

The Honorable Julie Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Acting Secretary Su:

We write regarding the importance of process and public comment in federal rulemaking, and the U.S. Department of Labor's (DOL) proposed rule released on October 31, 2023, with respect to proposed changes to the definition of "fiduciary" of an employee benefit plan under the Employee Retirement Income Security Act of 1974. This rulemaking will have a significant effect on how Americans access advice and services for retirement savings. As such, we believe it is critically important to significantly extend the public comment period for this rule to ensure that all stakeholders are able to provide feedback on this measure, so that any changes facilitate a system that works for hardworking Americans.

We believe the current 60-day comment period is insufficient for stakeholder engagement on a rule that the agency has spent almost three years drafting, more than a decade considering, and will have such broad impacts on retirement savers. This is significantly shorter than comment periods for previous iterations of this proposal. Furthermore, this comment period includes several major holidays, which has the effect of abbreviating the comment period even further. DOL's scheduling of a hearing 42 days into that comment period provided insufficient time for public comment or opportunity to examine the rule prior to the only opportunity for exchange. The 2010 proposal, which the Department eventually withdrew, offered a 90-day comment period with a 14-day extension followed by a public meeting with its own 15-day comment period. The 2016 fiduciary rule had a 75-day comment period with a 15-day extension and a public hearing followed by an additional 15-day comment period. We ask that DOL quickly move to extend the comment period, delay the hearing until after the close of the comment period, and provide an additional period for comment following that hearing.


We are hearing from constituents who are struggling to understand how to comply with such a sweeping rule during a time when many Americans are concerned about their economic security and ability to prepare for retirement. In addition, there have been various iterations of this rulemaking over the past decade, but each rulemaking should be taken on its own and previous public debate, hearings, comments, and meetings should not be considered sufficient engagement for this particular rulemaking as this proposal should reflect considerable changes resulting from a prior judicial order vacating an earlier version of the rule. In fact, especially because of the history of failed DOL rulemakings on this subject, and the concerns expressed during those processes by retirement savings providers, stakeholders, Members of Congress, and ultimately our court system, it is critical that the public process for any final rule provide enough time and reflect input received during the comment period. This proposal would be a significant

change to our existing system with serious implications and potential repercussions. Adequate time must be taken to consider what would happen if this rule went into effect and address potential unintended consequences.


It is crucial that DOL engage stakeholders in a meaningful and robust way as that is not only the way to produce better, more workable rules, but it is also necessary to comply with the requirements of the Administrative Procedure Act. Without properly engaging in a dialogue, you risk not having a holistic approach in the rulemaking process, disregarding stakeholder input, and inviting potential challenges to the final rule. This is not productive for anyone – taxpayers, retirement savers, or the DOL.

Given the broad impacts of this potential rulemaking, we are concerned that you are rushing this process and the people that will be hurt are the ones you are trying to help the most. We believe that a thorough and thoughtful comment processes yield better results for those impacted by rulemakings. This is particularly important for a rulemaking with such a politically charged past. We appreciate your consideration of our request and your expeditious response.


Sincerely,




Jon Tester
United States Senator




Gary C. Peters
United States Senator



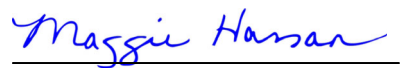
Joe Manchin III
United States Senator



Christopher A. Coons
United States Senator



Benjamin L. Cardin
United States Senator



Margaret Wood Hassan
United States Senator



Kyrsten Sinema
United States Senator



John Hickenlooper
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