

Congress of the United States
Washington, DC 20515

March 1, 2024

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

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

Dear Acting Secretary Su and Assistant Secretary Gomez:

We write to provide comments in response to the Department of Labor's (DOL's) proposed "Retirement Security" rule (RIN: 1210-AC02).¹ We support your goal of better protecting the interests of retirement investors. Consistent with that goal is ensuring individuals have access to diverse investment and retirement savings opportunities. With the aim of striking the right balance between investor protection and access to financial professional assistance, we draw your attention to some concerns that we have heard regarding the proposed rule.

Investment Related Information and Education

As individuals are increasingly expected to rely on themselves to ensure they are in a strong financial position for retirement, access to investment education must be not only preserved but encouraged. We understand that DOL has existing guidance in Interpretive Bulletin 96-1 regarding investment education that remains in place, which the preamble to the proposed rule acknowledges. That said, we are concerned that the guidance in the proposed rule may not sufficiently differentiate between sales and education and at what point an informational event becomes fiduciary. Does DOL differentiate between information provided during sales that describes products that a particular broker offers and recommendations? If there is such a differentiation, does DOL intend for both types of conversations to be fiduciary? Does DOL differentiate between information provided by an insurer's wholesaler educating a broker on the product offered from the recommendation the broker makes? Will DOL provide additional guidance regarding circumstances under which the provision of investment-related information will not constitute the rendering of "investment advice"?

¹ U.S. Department of Labor, Employee Benefits Security Administration: Proposed Retirement Security Rule: Definition of an Investment Advice Fiduciary; Proposed Amendment to Prohibited Transaction Exemption 2020-02; Proposed Amendment to Prohibited Transaction Exemption 84-24; and Proposed Amendment to Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, and 86-128, November 3, 2023.

Additionally, we have heard concerns that interactions between recordkeepers, recordkeeping support, and call centers may cease because of a lack of clarity regarding what functions they could perform without being treated as fiduciaries. Does DOL expect that such activities will continue unaffected by the proposed rules, or would the proposed rule now apply to these transactions?

Provision of Multiple Services

Broker-dealers can increase investment opportunities for lower-income and middle-income individuals who otherwise may be priced out. Additionally, broker-dealers are required to act in the best interest of their clients. That said, once a broker-dealer provides a recommendation or advice regarding the deployment of an individual's retirement savings, we understand why a higher fiduciary standard provides a necessary safeguard. One concern that has been raised to us is situations in which a financial institution provides brokerage services while another asset of the investor is managed on a discretionary basis by that financial institution or one of its affiliates. When a financial institution agrees with a customer expressly, clearly, and in writing that it is providing brokerage services only, would that agreement be determinative in that a fiduciary relationship with respect to that arrangement is not created?

Principal Transactions

In situations where a broker-dealer provides investment advice and relies on a prohibited transaction exemption (PTE 2020-02), we understand that there is an exemption providing relief for financial institutions and investment professionals to engage in principal transactions, but that the exemption does not include all such transactions. What is the scope of the transactions that are not covered and is DOL considering broadening that group?

Implementation Effective Date


The proposal notes that it will be effective 60 days after publication in the Federal Register. A two-month period does not appear reasonable to change existing agreements, create or change policies and procedures, create or change and conduct training, enhance current systems to ensure robust compliance, and amend all counterparty agreements for swaps and other derivatives. These rules should be implemented smoothly and effectively. We are concerned that a 60-day effective period will not accomplish that goal.

Thank you for your commitment to retirement security and efforts to ensure financial advisors provide financial advice that is in the best interest of retirement savers. While we share your laudable goals, we appreciate your attention to the concerns and questions we raised in this letter and the comments stakeholders submitted to the proposed rule.

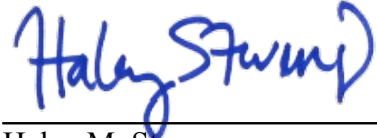
Sincerely,



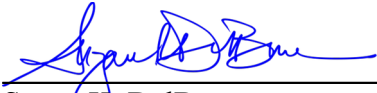
Gwen S. Moore
Member of Congress



Jimmy Panetta
Member of Congress
Co-Chair, Agriculture
Research Caucus



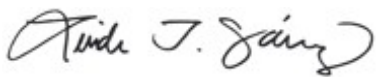
Haley M. Stevens
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Suzan K. DelBene
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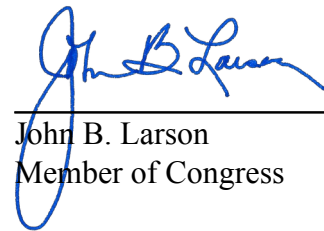
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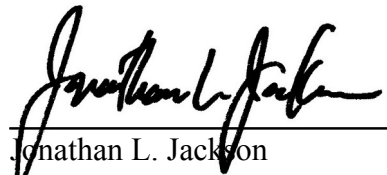
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Jesús G. "Chuy" García
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