

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)

Dear Director Canary:

I am writing to request an extension of the comment period on the notice of proposed rulemaking entitled “Financial Factors in Selecting Plan Investments” (Proposed Regulation). The Employee Benefits Security Administration (EBSA) announced its proposed regulation on June 23, 2020. I would request that the comment period be extended from 30 to 90 days.

As an ERISA attorney, I am concerned that the Proposed Regulation does not clearly reflect ERISA requirements that fiduciaries act solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits to their participants and beneficiaries. In fact, in its current form, the Proposed regulation is likely to lead to economic harm to plan participants and beneficiaries, as well as confusion for ERISA fiduciaries. Requiring fiduciaries to take all material economic risk factors into account in making investment decisions would be impossible if such fiduciaries are required to also comply with the language in the Proposed Regulation that appears aimed at preventing fiduciaries from taking account of these same risks.

I am interested in submitting a more thorough comment on the Proposed Regulation. The current 30-day comment period is, however, insufficient due to pandemic-related challenges and the research involved to convey the enormity of the potential negative economic impact on plan participants and beneficiaries if the Proposed Regulation were to be finalized “as is”. I respectfully request that the Department of Labor provide additional opportunities and time to collect information to ensure that the Department, practitioners, and investment fiduciaries have a shared understanding of the impact of the regulation and obligations thereunder. 90 days will provide a reasonable opportunity for me and other interested parties to submit comments.

Thank you for taking this request into consideration. Please feel free to contact me at shira@mckinlaylegal.com or (954)955-0033 if you have any questions.

Kind Regards,

Shira McKinlay, Attorney-at-Law