



Economic Policy Institute



April 21, 2026

By electronic submission via [www.regulations.gov](http://www.regulations.gov)

The Honorable Daniel Aronowitz  
Assistant Secretary  
Employee Benefits Security Administration  
United States Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

cc: Fred Wong, Office of Regulations and Interpretations  
Jeff Turner, Office of Regulations and Interpretations

Re: Request for Extension: Fiduciary Duties in Selecting Designated Investment Alternatives (RIN 1210-AC38)

Dear Assistant Secretary Aronowitz:

The signatories to this letter are consumer, retirement policy, and labor groups, and individuals that advocate for broad-based retirement income security which includes

meaningful protections for retirement investors. We write today because of our interest in the Department of Labor’s (DOL) proposed rule entitled “Fiduciary Duties in Selecting Designated Investment Alternatives” (Proposal). DOL has referred to this Proposal as a “landmark”<sup>1</sup> and “historic”<sup>2</sup> proposal that “remov[es] regulatory shackles.”<sup>3</sup>

This characterization, coupled with the Proposal’s 150+ pages and 20+ comment solicitations, underscores the complexity and importance to retirement investors of the many issues embedded in the Proposal. Accordingly, we respectfully request an extension of at least thirty days beyond the current comment period scheduled to end on June 1, 2026.

Congress designed the Administrative Procedure Act’s (APA) notice-and-comment procedures “to reintroduce public participation and fairness to affected parties after governmental authority has been delegated to unrepresentative agencies, and to assure that the agency will have before it the facts and information relevant to a particular administrative problem, as well as suggestions for alternative solutions.”<sup>4</sup> An insufficient comment period frustrates those purposes and violates the APA.

There is also clear precedent for providing at least a 90-day comment period for such a “historic” proposal. In its first proposal to amend the regulatory definition of an investment advice fiduciary under ERISA, DOL provided a 90-day comment period.<sup>5</sup> This was subsequently extended by two weeks,<sup>6</sup> and followed by two days of public hearings<sup>7</sup> as well as a subsequent public comment period<sup>8</sup> - before DOL ultimately announced it would repropose the rule.

In order to allow commenters, including the undersigned (none of whom, in contrast to other stakeholders, were consulted as DOL developed the Proposal) sufficient time to analyze it, fully understand the implications of removing “regulatory shackles,” collect any research and evidence necessary to support their respective positions, and then ultimately develop a thoughtful and meaningful response, DOL should extend the comment period.

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<sup>1</sup> Press Release, U.S. Dept. of Labor, US Department of Labor Proposes Landmark Rule to Democratize Access to Alternative Investments in 401(k) Plans (Mar. 30, 2026), <https://www.dol.gov/newsroom/releases/ebsa/ebsa20260330>.

<sup>2</sup> *Id.*

<sup>3</sup> Keith Sonderling, 401(k) Investment Menus Need a Reboot, REALCLEARMARKETS (Apr. 3, 2026), [https://www.realclearmarkets.com/articles/2026/04/03/401k\\_investment\\_menus\\_need\\_a\\_reboot\\_1173951.html](https://www.realclearmarkets.com/articles/2026/04/03/401k_investment_menus_need_a_reboot_1173951.html)

<sup>4</sup> *Am. Hosp. Ass’n v. Bowen*, 834 F.2d 1037, 1044 (D.C. Cir. 1987).

<sup>5</sup> <https://www.federalregister.gov/documents/2010/10/22/2010-26236/definition-of-the-term-fiduciary>

<sup>6</sup> Press Release, U.S. Dept. of Labor, US Department of Labor announces a public hearing on proposed definition of fiduciary regulation (Dec. 22, 2010), <https://www.dol.gov/newsroom/releases/ebsa/ebsa20101222-0>

<sup>7</sup> Hearing Transcript, U.S. Dept. of Labor, Public Hearing: Definition of Fiduciary Investment Advice (Mar. 1, 2011) at 3, <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/proposed-regulations/1210-AB32/hearing-transcript-1>.

<sup>8</sup> *Id.* at 4.

Thank you for your consideration of this request.

Sincerely,

Signing as an organization:

AFL-CIO

Americans for Financial Reform Education Fund

Better Markets

The Committee for a Fiduciary Standard

Consumer Federation of America

Economic Policy Institute

Financial Planning Association

National Committee to Preserve Social Security and Medicare

Pension Rights Center

Public Investors Advocate Bar Association

Signing as an individual:

James An, Assistant Professor of Law, Suffolk Law School

The Honorable Phyllis C. Borzi, former Assistant Secretary of Labor for the Employee Benefits Security Administration (2009-2017)

Ali Khawar, former Acting Assistant Secretary of Labor for the Employee Benefits Security Administration (2021-2022)

Dana Muir, Robert L Dixon Collegiate Professor of Business at University of Michigan

Maria C. O'Brien, Paul M. Siskind Scholar and Professor of Law at Boston University

David Pratt, Jay and Ruth Caplan Distinguished Professor, Albany Law School

Lauren K. Valestro, Assistant Professor of Law, Frank McDonald Scholar in Business Law, Texas Tech University School of Law

Peter J. Wiedenbeck, Joseph H. Zumbalen Professor of the Law of Property, Washington University in St. Louis