

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

December 7, 2023

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

Dear Acting Secretary Su:

The House Committee on Small Business (the Committee) writes to inquire about the recent proposed rule changes to the Retirement Security Rule and amendments to Prohibited Transaction Exemptions. These proposed changes would amend nearly 50-year-old standards and subject more financial professionals to the strictest fiduciary standards of conduct.¹ This increased burden and historic level of lost commission will likely lead these small financial professionals to go out of business or limit their services—negatively impacting both the business owners and the consumers.² It appears that the Department of Labor (DOL) may not have properly considered small entities during this rulemaking process.

Nearly all the affected entities are small businesses—over 97 percent of broker-dealers and 99 percent of registered investment advisors are small businesses.³ The costs associated with this rule package are significant; during the first year alone the estimated aggregate cost for small entities due to the proposed amendments to each exemption for a single small entity is approximately \$22,459 and \$248 million for all small entities.⁴

It is important for agencies to examine small businesses interests—which make up 99.9 percent of all businesses in the United States—when passing any new rule. America’s small businesses deserve to have their voices heard and considered. We therefore request the following information as soon as possible but no later than December 21, 2023:

1. The DOL assumes that impacted small entities “incur only incremental costs.”⁵ However, the entities will incur costs associated to review the rules, disclosure requirements, rollover documentation and disclosure, retrospective review, written policies and

¹ Employee Retirement Income Security Act of 1974, 88 FR 75890 (2023) (to be codified at 29 CFR 2510); Austin R. Ramsey, *Biden Rolls Legal Dice by Proposing Fourth Fiduciary 401(k) Rule*, BLOOMBERG LAW (Nov. 7, 2023).

² Austin R. Ramsey, *Biden Touts 401(k) Fiduciary Rules as Attack Against ‘Junk Fees’*, BLOOMBERG LAW (Oct. 31, 2023).

³ Employee Retirement Income Security Act of 1974, 88 FR 75890 (2023) (to be codified at 29 CFR 2510).

⁴ *Id.*

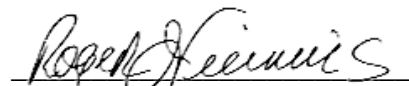
⁵ *Id.*

procedures, and recordkeeping.⁶ Considering all various costs for all the amendments and rules, how did the DOL conclude that these costs are only incremental?

2. The proposed rule package is over 500 pages. Are there other resources available, besides the rules themselves, to small entities to help them understand the impacts the rules will have on their operations?
3. The proposed rule would apply expensive disclosure requirements to advisers who earn commissions to ensure their interests align with those of investors.⁷ Did the DOL consider how to make this burden lighter on small entities?
4. The US Securities and Exchange Commission already applies a best-interest standard for retail securities brokers and most of the states have adopted a best-interest-like model for insurance sales.⁸ Why does the DOL believe this new strict rule is necessary when there are already regulations in place to protect consumers?
5. Industry groups representing financial service firms are concerned that the short comment period will not give them sufficient time to respond to the package. Has the DOL considered extending the comment period to 90 days, or longer, to give the impacted entities sufficient time to respond?

To schedule the delivery of your response or ask any related follow-up questions, please contact Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate “problems of all types of small business” under House Rule X. Thank you in advance for your cooperation with this inquiry.

In God We Trust,



Roger Williams
Chairman
Committee on Small Business



Dan Meuser
Member
Committee on Small Business

⁶ *Id.*

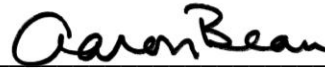
⁷ *Id.*; Austin R. Ramsey, *Biden Rolls Legal Dice by Proposing Fourth Fiduciary 401(k) Rule*, BLOOMBERG LAW (Nov. 7, 2023).

⁸ *Id.*

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Page 3 of 3



Mark Alford
Member
Committee on Small Business



Aaron Bean
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cc: The Honorable Nydia M. Velasquez, Ranking Member
Committee on Small Business