

MEMO# 34087

March 25, 2022

ICI and Other Organizations Request Extended Comment Period for Recent DOL Proposal on Prohibited Transaction Exemption Application Procedures

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI and Other Organizations Request Extended Comment Period for Recent DOL Proposal on Prohibited Transaction Exemption Application Procedures

As we previously reported, the Department of Labor (DOL) recently proposed amendments to the procedures governing the filing and processing of prohibited transaction exemption applications ("Proposal").[\[1\]](#) DOL provided for a 30-day comment period (ending on April 14, 2022) and categorized the Proposal as not "significant" under Executive Order 12866 (EO 12866).[\[2\]](#) In the attached letter, ICI joined several other trade organizations[\[3\]](#) in requesting that DOL (1) extend the comment period to 60 days; and (2) reevaluate whether the Proposal is significant.

The letter explains that, unlike most administrative procedures, the Proposal contains substantive provisions that raise novel legal and policy issues, which require substantial time and effort to evaluate and comment on. Furthermore, given these substantive changes which create a new substantive, legal policy, the letter states that DOL should reexamine its determination that the Proposal is not "significant" under EO 12866 and therefore not subject to OMB review.

The group sent a similar letter to OMB (also attached) requesting that OMB designate the final rulemaking as significant, subject to OMB review.

Shannon Salinas

Associate General Counsel - Retirement Policy

endnotes

[1] For an overview of the Proposal, see ICI Memorandum No. 34068, dated March 9, 2022, available at <https://www.ici.org/memo34068>. The Proposal was published at 87 Fed. Reg. 14722 (March 15, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-03-15/pdf/2022-04963.pdf>.

[2] Under EO 12866, agencies must determine whether a regulatory action is "significant," which will subject the action to Office of Management and Budget (OMB) review.

[3] In addition to ICI, the signatories include: Alternative & Direct Investment Securities Association, American Benefits Council, American Council of Life Insurers, the Employee-owned S Corporations of America, the ESOP Association, Financial Services Institute, Inc., Finseca, Indexed Annuity Leadership Council, Institute for Portfolio Alternatives, Institute for Portfolio Management, Investment Company Institute, Insured Retirement Institute, National Association of Fixed Annuities, National Association of Insurance and Financial Advisors, Securities Industry and Financial Markets Association, and U.S. Chamber of Commerce.

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