

United States Senate

WASHINGTON, DC 20510-2102

July 24, 2012

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Solis:

I am writing to express my concerns about Q&A-30 of the recently issued Field Assistance Bulletin 2012-12 and to request that you consider withdrawing Q&A-30 and instead pursue this issue in the traditional context of a formal rule-making. This would allow for the level of public comment and notice with respect to this element of the guidance that I believe is most appropriate.

Overall, the Department's recently issued Field Assistance Bulletin 2012-12 provides very helpful guidance related to recent plan and investment-related disclosure requirements. As you know, this provides further guidance to plan administrators regarding information that they need for purposes of compliance with their disclosure obligations to plan participants. Participants need this required information to make informed choices in planning for their retirement.

My concern is that Q&A-30, however, does not provide interpretive guidance with respect to the disclosure regulations, but instead sets forth new rules that were not previously contained in any guidance issued by the Department. Specifically, Q&A-30 states that (1) a plan fiduciary may have liability if he does not designate a manageable number of investment alternatives, and (2) a plan fiduciary may have liability if he does not provide the regulatory disclosures with respect to investments in which a significant number of participants are invested through a brokerage window available under the plan.

It is my understanding that Q&A-30 contains new rules that may not be consistent with prior guidance. While I am not expressing any position with respect to the substance of Q&A-30, I am afraid that the lack of advanced warning and the inability for comment from the regulated community will have serious unintended consequences for plans. Further, because there is no delayed effective date with respect to actions against plan fiduciaries pursuant to Q&A-30, these new rules are effective immediately. With respect to brokerage window investments, the general due date for disclosures may technically be August 30, 2012, but preparation for the August 30 disclosures was generally completed well before now. Due to the lack of advanced notice, a vast number of employers will not be able to comply in any way by the August 30 deadline. Even if an employer could comply, in too many cases, all available means of compliance could create other potential liabilities. I have also been made aware that many small business plan experts are

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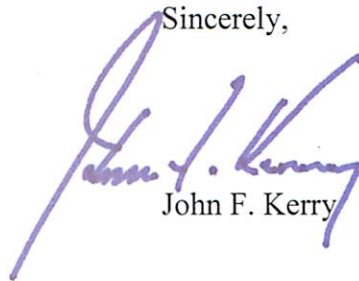
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concerned that these rules and potential liabilities could result in termination of many small business plans.

Given the lack of notice and opportunity for comment on Q&A-30, I ask the Department should withdraw this Q&A and follow all applicable statutory and administrative requirements, including the Administrative Procedure Act, Executive Orders, and OMB requirements that govern the agency rulemaking process. This will allow all parties to appropriately consider the relevant policy and administrative issues implicated by Q&A-30 and provide comments to ensure that the final guidance is workable.

Thank you for your timely attention to these concerns.

Sincerely,



John F. Kerry

cc: The Honorable Cass Sunstein, Office of Information and Regulatory Affairs, OMB