

United States Senate

WASHINGTON, DC 20510

September 25, 2026

The Honorable Keith E. Sonderling
Acting Secretary of Labor
U.S. Department of Labor
200 Constitution Ave.
Washington, D.C. 20210

The Honorable Daniel Aronowitz
Assistant Secretary of Labor
U.S. Department of Labor
200 Constitution Ave.
Washington, D.C. 20210

Dear Acting Secretary Sonderling and Assistant Secretary Aronowitz,

We write to request information regarding reports that over ten thousand comments submitted in support of the Department of Labor’s (DOL) proposed rule to expose retiree savings to alternative assets “may have been manufactured to resemble grassroots support for the controversial measure.”¹ Specifically, reporters identified “nearly 12,000” supportive comments that “lacked any personalization, such as signatures, and had no variation in the text”—including some comments submitted “in the names of dead people.”² As DOL considers opening defined-contribution plans, such as 401(k)s, to risky assets like private equity and cryptocurrencies, it is essential that the agency fully understand the extent to which public comments in support of the proposal have been fabricated.

Earlier this year, the Employee Benefit Security Administration (EBSA) at DOL released a proposed rule entitled, “Fiduciary Duties In Selecting Designated Investment Alternatives.”³ The proposal, released in response to an Executive Order, would establish a so-called safe harbor for fiduciaries who offer alternative investments—such as private equity, private credit, and digital assets—in retirement plans.⁴ This would strip long-held investor protections from retirement savers and encourage the use of more risky, complex, and expensive investments, and on June 1, 2026, we wrote to DOL in opposition to the rule.⁵

¹ Bloomberg, “Trump’s 401(k) Proposal Shows Evidence of Phony Public Support,” Noah Buhayar and Jeff Kao, August 13, 2026, <https://www.bloomberg.com/news/features/2026-08-13/trump-401-k-proposal-shows-signs-of-phony-supportive-cmments>.

² *Id.*

³ Regulations.gov, “Fiduciary Duties In Selecting Designated Investment Alternatives,” March 31, 2026, <https://www.regulations.gov/document/EBSA-2026-0166-0001>.

⁴ *Id.*

⁵ Letter from Ranking Members Elizabeth Warren, Bernard Sanders and Robert C. “Bobby” Scott to Acting Secretary Sonderling, June 1, 2026, https://democrats-edworkforce.house.gov/imo/media/doc/scott_sanders_warren_bicameral_letter_to_acting_secretary_of_labor_keith_sonderling_regarding_alternative_assets.pdf.

Federal law requires agencies to solicit and consider public comments on proposed rules, and over 45,000 public comments were submitted in response to DOL’s proposal.⁶ Concerningly, it appears that over ten thousand of those comments may have been “manufactured.”⁷ According to *Bloomberg*, roughly 12,000 comments submitted to DOL in support of the rule appeared in five templates and were submitted in similar daily quantities over approximately one week.⁸ It is not uncommon for the public to submit comments as form letters, “provided that the individuals whose names appear on them have actually signed their names.”⁹ Although the Administrative Procedure Act (APA) does not require commenters to disclose identity information, GAO acknowledges that electronic comment platforms “make the comment process more susceptible to abuses, such as... high volumes of comments intended to flood platforms.”¹⁰ In this case, the supportive comments “lacked any personalization, such as signatures, and had no variation in the text,” as compared to “almost all of” the over 30,000 comments opposing the rule that “included the commenter’s city, state or email address.”¹¹ More troublingly, when *Bloomberg* sought to contact individuals whose names appeared on these supportive comments, it identified multiple instances in which the purported commenters – or their family members – said they had not submitted the comments. At least one “commenter” had reportedly died approximately five months before the comment was filed.¹²

Concerningly, this is not the first time that DOL has confronted evidence that comments on rulemaking affecting Americans’ retirement savings may have been generated without the knowledge of the supposed commenters. Specifically, in 2017, the *Wall Street Journal* examined comments submitted about the Department’s 2015 fiduciary rule and found that 40 percent of the individuals they contacted said they had not written the comments attributed to them.¹³ The investigation also found that “most of the 345 [submitted] comments were critical of the fiduciary rule,” in support of the policy positions of Wall Street.¹⁴ Additionally, in a 2021 survey on public comment data, which included EBSA data, GAO estimated that 5 to 30 percent of presumed commenters did not actually make the comments, “calling into question the actual source of these comments.”¹⁵

⁶ Regulations.gov, “Fiduciary Duties In Selecting Designated Investment Alternatives,” March 31, 2026, <https://www.regulations.gov/document/EBSA-2026-0166-0001>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ U.S. Government Accountability Office, “Federal Rulemaking: Selected Agencies Should Clearly Communicate Practices Associated with Identity Information in the Public Comment Process,” GAO-19-483, June 26, 2019, <https://www.gao.gov/products/gao-19-483>; U.S. Government Accountability Office, “Federal Rulemaking: Information on Selected Agencies’ Management of Public Comments,” GAO-20-383, April 16, 2020, p. 1, <https://www.gao.gov/assets/gao-20-383r.pdf>.

¹¹ Bloomberg, “Trump’s 401(k) Proposal Shows Evidence of Phony Public Support,” Noah Buhayar and Jeff Kao, August 13, 2026, <https://www.bloomberg.com/news/features/2026-08-13/trump-401-k-proposal-shows-signs-of-phony-supportive-cmments>.

¹² *Id.*

¹³ Wall Street Journal, “Many Comments Critical of ‘Fiduciary’ Rule Are Fake,” James V. Grimaldi and Paul Overberg, December 27, 2017, <https://www.wsj.com/articles/many-comments-critical-of-fiduciary-rule-are-fake-1514370601>.

¹⁴ *Id.*

¹⁵ U.S. Government Accountability Office, “Federal Rulemaking: Selected Agencies Should Fully Describe Public Comment Data and Their Limitations,” GAO-21-103181, September 21, 2021, <https://www.gao.gov/products/gao-21-103181>.

It is unclear whether the Department's policies and procedures sufficiently account for the existence of these potentially fraudulent comments that may suggest far greater public support for a proposed action than actually exists. According to a 2019 Government Accountability Office (GAO) examination of selected agencies' handling of commenters' identity information, EBSA and DOL utilize "guidance...stat[ing] that if a comment was submitted by someone falsely claiming to be the commenter, the identifying information is to be removed from the comment and the comment is treated as anonymous and remains posted."¹⁶ GAO further noted that "DOL guidance does not indicate how officials determine that a comment was submitted using false identity information," and also acknowledged that, generally, the APA does not require federal agencies to verify commenter identity during the rulemaking process.¹⁷ Recent reports that once again highlight potentially fraudulent comments in an EBSA rulemaking process raise serious questions about the integrity of the administrative record for a rule that could have significant consequences for Americans' retirement savings while benefitting Wall Street.

Accordingly, please provide responses to the following questions no later than October 8, 2026:

1. Provide a copy of DOL and EBSA's most recent guidance documents governing the treatment of comments with potentially false identity information.
 - a. Has this guidance been updated since 2019?
 - b. If DOL determines that comments were submitted using individuals' identities without their knowledge or consent, what steps will the Department take to identify, remove, flag, or otherwise address those comments in the administrative record? What procedures, if any, exist to refer any potentially unlawful conduct to the appropriate authorities, including the Department of Justice?
 - c. Does EBSA still treat comments "submitted by someone falsely claiming to be the commenter...as anonymous" and keep those comments publicly posted?
 - d. What procedures does DOL use to identify fraudulent, unauthorized, or otherwise inauthentic comments submitted during a rulemaking? What information, including IP addresses or other available submission metadata, does DOL review or retain for purposes of identifying potentially fraudulent submissions?
2. Is the DOL investigating the allegations identified by *Bloomberg*, including whether comments were submitted without the knowledge or authorization of the individuals whose names appear on them?
 - a. If not, why not?
 - b. If so, describe the investigation and the processes and procedures being followed.

¹⁶ U.S. Government Accountability Office, "Federal Rulemaking: Selected Agencies Should Clearly Communicate Practices Associated with Identity Information in the Public Comment Process," GAO-19-483, July 26, 2019, p. 26, <https://www.gao.gov/assets/gao-19-483.pdf>.

¹⁷ U.S. Government Accountability Office, "Federal Rulemaking: Selected Agencies Should Clearly Communicate Practices Associated with Identity Information in the Public Comment Process," GAO-19-483, July 26, 2019, <https://www.gao.gov/products/gao-19-483>.

- c. Does the investigation include an attempt by the DOL to determine the individual, organization, company, or other entity responsible for submitting or coordinating fake comments? If so, please provide the steps taken and any findings to date.
3. Will DOL review the authenticity of the apparently manufactured comments identified by *Bloomberg* before relying on those comments or representations regarding the level of public support for the proposal in developing or finalizing the rule?
4. Please describe all actions DOL and EBSA took in response to GAO's 2019 recommendations regarding EBSA's policies for posting public comments and associated identity information.
5. What controls does DOL currently have in place to detect whether multiple comments were mass submitted by the same individual or entity using different names or identities?

Sincerely,



Elizabeth Warren
Ranking Member
Committee on Banking,
Housing, and Urban Affairs



Bernard Sanders
United States Senator
Ranking Member, Committee
on Health, Education, Labor,
and Pensions