COMMONWEALTH *financial network*

VIA ELECTRONIC MAIL

March 16, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Fiduciary Rule Examination, Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: RIN 1210-AB79

Ladies and Gentlemen:

In its proposed rule published in the *Federal Register* on March 2, 2017 ("Proposal"),[1] the Department of Labor ("Department") proposed delaying the applicability date of the final rule, entitled "Definition of the Term 'Fiduciary'; Conflict of Interest Rule–Retirement Investment Advice" ("Fiduciary Rule"), under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986, and the related prohibited transaction exemptions. The Proposal is in response to a Presidential Memorandum to the Secretary of Labor dated February 3, 2017, directing the Department to examine whether the Fiduciary Rule may adversely affect the ability of Americans to obtain retirement information and financial advice.[2]

Commonwealth Financial Network® ("Commonwealth") is an independent broker/dealer and an SEC-registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 1,700 registered representatives and investment adviser representatives who are independent contractors conducting business in all 50 states (collectively, "Advisors"). Virtually all of Commonwealth's Advisors work with qualified retirement plans or IRAs and will be affected by the Fiduciary Rule.

Commonwealth strongly supports a delay in the applicability date of the Fiduciary Rule. Although we endorse a fiduciary standard across all retirement accounts, we have grave concerns about the complexity of the Fiduciary Rule and the associated prohibited transaction exemptions. The Fiduciary Rule, as adopted, is rife with unintended consequences, and it has been an unprecedented disruption to the financial industry.

The Fiduciary Rule, as written, will result in increased costs to investors, decreased investor choice, and decreased access to retirement information and financial advice for smaller investors who need professional guidance the most. The Department's economic analysis fails to account for increased compliance costs, some of which will necessarily be passed on to investors. Moreover, the Fiduciary Rule forces firms to shrink their product offerings to ensure advisor compensation is level, thus limiting investor choice on how to pay for investment advice. Small investors in particular will be adversely affected by the Fiduciary Rule because firms are unable to justify the increased costs and regulatory burdens of servicing these accounts.

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[1] Definition of the Term "Fiduciary," 82 Fed. Reg. 12,319 (March 2, 2017)
[2] *Id.*

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Presidential Memorandum

The Presidential Memorandum charges the Department with conducting an economic, legal, and policy analysis of the Fiduciary Rule. The proposed delay is absolutely necessary for the Department to perform its analysis. In fact, the Proposal does not go far enough—the applicability date should be delayed at least 180 days so the Department has enough time to complete a proper reexamination of the Fiduciary Rule.

Uncertainty for Financial Industry and Investors

The fate of the Fiduciary Rule has been in question ever since last November's election. As firms prepare to implement the rule, this uncertainty has further complicated an already monumental undertaking. In addition, investors have been unsure about whether there will be any changes to the products and services offered by their financial institutions. Commonwealth applauds the Department for providing guidance about its enforcement policies in Field Assistance Bulletin No. 2017-01. To avoid investor confusion and market disruptions, the Department should act quickly to delay the rule, and communicate updates to the public on a regular basis.

Flawed Assumptions in Regulatory Impact Analysis

The Department's economic analysis is based on studies that are questionable. Brian Reid, chief economist of the Investment Company Institute, criticized the Department's data and findings at a hearing before the United States House of Representatives Committee on Education and the Workforce.[3] Mr. Reid's primary critique was that the Department's assumption that brokers who earn front-end commissions direct investors into funds that "underperform" ignored data drawn from the markets since 2007, which showed that front-end loaded funds actually outperformed the average returns for their fund categories.

The Department should conduct a further regulatory impact analysis, and solicit data from financial institutions about the initial and ongoing costs of complying with the Fiduciary Rule and its related prohibited transaction exemptions.

Conclusion

The Department should act quickly to delay the applicability date of the Fiduciary Rule for at least 180 days. Not only is the delay necessary to fulfill the Department's mandate under the Presidential Memorandum, the delay will protect against investor confusion and marketplace disruptions. The Department needs to take this opportunity to revise the Fiduciary Rule in a way that will protect investors without limiting access to retirement advice or restricting investor choice.

Thank you for the opportunity to comment on the Proposal. If you have any questions regarding our comments or concerns, please call me at 781.736.0700.

Sincerely,
Commonwealth Financial Network

/s/ Brendan Daly
Legal and Compliance Counsel

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[3] See e.g., Oral Testimony of Brian Reid, Chief Economist, Investment Company Institute, Subcommittee on Health, Employment, Labor, and Pensions, Committee on Education and the Workforce, United States House of Representatives, June 17, 2015, https://www.ici.org/govaffairs/testimony/15_house_fiduciary_oral.