President
Robert Roach, Jr.

Secretary-Treasurer
Joseph Peters, Jr.

March 17, 2017

Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Definition of the Term "Fiduciary" - Delay of Applicability Date, RIN 1210-AB79

Ladies and Gentlemen:

On behalf of the more than 4.4 million members of the Alliance for Retired Americans, I am writing to express our strong support for the Department of Labor's (DOL's) conflict of interest rule and our strong opposition to the proposal to delay the rule's applicability date. This rule strengthens protections for retirement savers by requiring financial advisers and their firms to provide retirement investment advice that is in their clients' best interests. Delaying implementation of these new protections would allow financial advisers and their firms to continue to engage in harmful practices that threaten the retirement security of their clients. Even according to the DOL's own analysis, this proposed delay is unjustified.

Under current law, many financial advisers that retirement savers turn to for retirement investment advice are legally allowed to make recommendations that serve their own self-interest, at their client's expense. In its Regulatory Impact Analysis (RIA), the DOL extensively chronicled the nature and extent of advisory conflicts of interest. The RIA found, based on a wide body of economic evidence, that conflicted advice is widespread and causes serious harm to plan and IRA investors. It also found that advisers' conflicts can take a variety of forms and can bias their advice in a variety of ways. Furthermore, it found that advisers' compensation arrangements are often calibrated to align the firms', advisers', and product manufacturers' interests, not investors'.

The losses that stem from conflicted advice can be significant. After a careful review of the evidence, which consistently points to a substantial failure of the market for retirement advice, the DOL estimated that IRA holders receiving conflicted investment advice can expect their investments to underperform by an average of 50 to 100 basis points per year over the next 20 years. Based on this careful review of the evidence, the DOL concluded that the underperformance associated with conflicts of interest – in the mutual funds segment alone – could cost IRA investors between $95 billion and $189 billion over the next 10 years and between $202 billion and $404 billion over the next 20 years. An ERISA plan investor who rolls her retirement savings into an IRA could lose 6 to 12 and possibly as much as 23 percent of the value of her savings over 30 years of retirement by accepting advice from a conflicted financial adviser. The harm to retirement savers is far greater when you consider the full range of products and the full range of conflicts that influence advisers' investment recommendations.

In addition to the harm that can befall IRA investors from conflicts of interest, plan investors can experience losses as a result of conflicts of interest as well. For example, the RIA pointed to a GAO study, which found that defined benefit pension plans using consultants with undisclosed conflicts of interest earned 1.3 percentage points per year less than other plans. Other recent research supports this finding. For example, a recent study by the Center for Retirement Research at Boston College found that mutual fund companies involved in plan management often act in ways that appear to advance their interests at the expense of plan participants.[1] The authors found that this bias is especially pronounced in favor of affiliated funds that delivered sub-par returns over the preceding three years. And participants do not shift their savings to undo this favoritism, especially the favoritism shown to sub-par affiliated funds, according to the study. The study also found that the lackluster performance of these sub-par funds usually persists.

Another recent study published in the Yale Law Journal found that a significant portion of 401(k) plans establish investment menus that predictably lead investors to hold high-cost portfolios. Using data from more than 3,500 401(k) plans with more than $120 billion in assets, the authors found that fees and menu restrictions in an average plan lead to a cost of seventy-eight basis points in excess of index funds. The authors also documented a wide array of "dominated" menu options -- funds that make no substantial contribution to menu diversity but charge fees significantly higher than those of comparable funds in the marketplace.[2]

The DOL rule would directly address the problem of conflicted retirement investment advice in the plan and IRA contexts by requiring all financial advisers who provide retirement investment advice to serve their clients' best interest, not their own self-interest. Importantly, the rule applies this protection not only to individual investors, but also to employers operating small company plans and relying on financial institutions for advice on investment selection. While the rule clearly allows firms to charge commissions for this advice, firms would be required to ensure that charging in this way is consistent with the client's best interest. The rule would require firms and advisers to charge no more than reasonable compensation based on the value of products and services provided. And, it would require firms to rein in their often toxic web of conflicts of interest that encourage and reward advice that is not in their clients' best interest. As a result, the rule would better align advisers' and their clients' incentives and, ultimately, produce better outcomes for both.

1 Veronika K. Pool, Clemens Sialm, and Irina Stefanescu, Are 401(k) Investment Menus Set Solely for Plan Participants?, Center for Retirement Research Boston College, August 2015, http://crr.bc.edu/wp-content/uploads/2015/08/IB_15-13.pdf

2 Ian Ayres & Quinn Curtis, Beyond Diversification: The Pervasive Problem of Excessive Fees and "Dominated Funds" in 401(k) Plans, Yale Law Journal, March 2015, http://www.yalelawjournal.org/article/excessive-fees-and-dominated-funds-in-401k-plans, http://www.yalelawjournal.org/article/excessive-fees-and-dominated-funds-in-401k-plans

Recent developments have shown how the DOL rule is transforming the way commission-based advice is offered, with enormous potential benefits for all investors, not just those saving for retirement. For example, the Securities and Exchange Commission recently approved a proposal from Capital Group to create a new class of mutual fund shares for its American Funds that will greatly ease compliance with the DOL rule while preserving investors' ability to get commission-based advice.[3] The approved "clean shares" will allow the broker, rather than the fund, to determine how much to charge for their services. By allowing brokers to separately price commissions, just as they do when recommending ETFs and individual securities, these shares make it easier for firms to adopt compensation policies that pay standardized amounts across different funds and different investments, eliminating the conflicts that are the target of the DOL rule without eliminating commission-based advice. They also allow advisers to succeed and prosper based on the cost and quality of their services and products rather than on how much they are being paid by third parties to recommend particular investments. In addition, many other fund firms are responding to the DOL rule by issuing T shares that both dramatically reduce the commissions for broker-sold funds and reduce the compensation-related conflicts associated with those funds. With T shares carrying a maximum sales load of 2.5 percent, compared with an industry standard for A shares of 4.75 percent (and as high as 5.75 percent), and 12b-1 fees of just 25 basis points, investors will also benefit from the dramatic reduction in cost. Indeed, Morningstar's John Rekenthaler notes, these shares have the potential to exert downward pressure on investment advisers' asset-based fees as well, as advisers seek to remain cost competitive.[4]

In addition, a number of major firms, including Schwab, Blackrock, Fidelity and Prudential, among others, have announced plans to reduce costs on certain investment products, such as ETFs and mutual funds, at least in part to be more competitive under the DOL rule.[5] And, large firms have announced that they are reducing advisory account minimums and costs as a result of the rule. For example, Edward Jones and LPL announced shortly after the DOL rule was finalized that they would lower the minimums on their fee accounts, to $5,000 and $10,000 respectively.[6] Schwab just announced a new advisory program with a minimum initial investment of $25,000, all-in-costs between 0.36% and 0.52%, and comprehensive financial and investment planning from a CFP professional.[7] Vanguard's Personal Advisor Services offers fee-based

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3 John Waggoner, "American Funds gets SEC approval for clean shares," Jan. 13, 2017, http://www.investmentnews.com/article/20170113/FREE/170119955/american-funds-gets-sec-approval-for-clean-shares.

4 John Rekenthaler, Lower-Cost T Shares Coming to a Fund Near You, Morningstar, January 6, 2017, http://beta.morningstar.com/articles/787395/lower-cost-t-shares-coming-to-a-fund-near-you.html

5 Consumer Federation of America, "The Department of Labor Conflict of Interest Rule is Already Delivering Benefits to Workers and Retirees: Delay Puts Those Benefits at Risk," Jan. 31, 2017, http://consumerfed.org/wp-content/uploads/2017/01/1-31-17-DOL-Rule-Delivering-Benefits_Fact-Sheet.pdf.

6 Michael Wursthorn, Brokerages Adapt to Pending Labor Rule, Wall Street Journal, March 16, 2016, https://www.wsj.com/articles/brokerages-adapt-to-pending-labor-rule-1458151260

7 Press Release, Schwab, "Schwab Announces Schwab Intelligent Advisory™"

advisory and financial planning services, charging only 0.30% for accounts with $50,000. This platform has gathered almost $40 billion in less than two years.[8]

The financial industry has spent a considerable amount of time and money preparing for implementation of the rule, and firms have made some very impressive improvements to their business models in order to comply. In response to a letter sent by United States Senator Elizabeth Warren, a number of firms, including Charles Schwab, BBVA Compass, Capital One, John Hancock, U.S. Bancorp, Fidelity, RBC, Principal Financial Group, Prudential Financial, LPL Financial, Symetra Life Insurance, TIAA, Transamerica and Wells Fargo, responded they had devoted time and resources to meeting the April 10, 2017 implementation date and all expressed confidence that they would indeed be ready to comply on that date.[9]

However, a delay of implementation threatens to halt the progress that has already been achieved from firms' efforts. Worse, it could result in firms' rolling back their pro-investor changes to recoup costs that they'd spent to comply. As a result, all of the benefits from firms' efforts that would flow to retirement savers would be in jeopardy if a delay goes through. Simply put, a delay in implementation of the DOL rule will harm retirement savers.

Moreover, the DOL's economic analysis "supporting" the delay greatly understates the harm to investors from a delay. It looks at only one segment of the market -- mutual funds in IRAs. This means that the DOL did not account for the costs that could accrue to retirement savers from other products, including various annuities and non-traded REITs, for example, or the costs that could accrue to plan investors, as discussed above. Not considering these additional costs, as well as other sources of conflicts of interest that ultimately harm retirement savers is a major deficiency in the proposal.

Yet even according to the DOL's incomplete analysis, the proposed delay cannot be justified on a cost-benefit basis. The DOL projects that a 60-day delay could lead to a reduction in estimated investment gains of $147 million in the first year and $890 million over 10 years using a three percent discount rate. In contrast, the DOL projects cost savings to firms of $42 million during those 60 days. Thus, the even the limited harm to retirement savers calculated by DOL dwarfs industry savings from a delay.

And, the harms to retirement savers are likely to persist well beyond a 60-day delay. As the proposal points out, "losses could continue to accrue until affected investors withdraw affected funds or reinvest them pursuant to new recommendations." This would especially be the case if a retirement investor receives a rollover recommendation during the delay to invest in a product with a long surrender period and hefty surrender charge. In that scenario, the cost of the

December 13, 2016, http://pressroom.aboutschwab.com/press-release/schwab-investor-services-news/schwab-announces-schwab-intelligent-advisory

8 Vanguard, Personal Advisor Services, https://investor.vanguard.com/advice/personal-advisor

9 Letter from United State Senator Elizabeth Warren to Acting Department of Labor Secretary Edward Hugler, Feb. 7, 2017, http://www.warren.senate.gov/files/documents/2017-2-7_Warren_Ltr_to_DOL.pdf.

conflict could persist for over a decade. Even if affected funds are withdrawn or reinvested after the 60-day delay according to best interest advice, the damage will have been done and those losses will never be able to be recovered because the accumulated losses from conflicts will have eroded the asset base that would be available later for investment or spending.

Moreover, it's a farce to suggest that the delay will be limited to 60 days. The 45-day comment period to address the issues outlined in the Presidential Memorandum as well as many complex questions raised in the proposal will end on April 17th. This would provide less than eight weeks for the Department to consider and respond to comments, and make a final decision before the delay runs out on June 9th regarding whether to engage in further rulemaking. That's simply way too short of a time to engage in the type of careful and rigorous analysis that is appropriate for an issue of this importance, and it is totally inconsistent with the careful and deliberative process the DOL undertook in promulgating the rule. The proposal itself anticipates that it may take more time to complete the full examination of the rule, further delaying protections for retirement savers. Assuming the Department reasonably anticipates that a longer delay will be needed, it must evaluate the delay proposal based on the economic impact of the reasonably anticipated delay, not a conveniently chosen timeframe that appears to be based on the agency's interest in not being sued. If the DOL does evaluate the delay proposal based on the economic impact of a reasonably anticipated delay, it will find that the longer the rule is delayed, the more harm will befall retirement savers and the more obvious it will become that a delay is wholly unjustified.

The DOL should seriously rethink its apparent position that industry opponents' interests in avoiding having to comply with the rule should win out over retirement savers' interests in receiving the critical protections from the rule. Retirement savers, particularly small savers, cannot afford to wait any longer for those protections to be in place. Small savers are disproportionately served by non-fiduciaries today and therefore most susceptible to being given conflicted, harmful advice. As a result, small savers have the most to gain from having this rule be implemented as scheduled because it will ensure that every dollar that they save for retirement counts—that investment returns are maximized and unnecessary and hidden costs are minimized. Retirement savers need and deserve to receive the protections of the rule without delay. Accordingly, the DOL should conclude that the proposed delay is unjustified and that the rule should be implemented beginning on April 10th.

Sincerely,

Richard J. Fiesta

Richard J. Fiesta
Executive Director