

Via Electronic Mail to [e-ORI@dol.gov](mailto:e-ORI@dol.gov)

March 15, 2017

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

Re: Definition of the Term “Fiduciary” and Related Prohibited Transaction Exemptions  
Proposed Extension of Applicability Date (RIN 1210-AB79)

Ladies and Gentlemen:

The Money Management Institute (“MMI”) appreciates the opportunity to provide its views on the Department of Labor (“DOL”) proposal to extend the applicability date of the DOL’s amendments to its regulation defining the term “fiduciary” and the related prohibited transaction exemptions (the “Fiduciary Rule”).<sup>1</sup> We encourage the DOL to extend the applicability date to provide sufficient time for the DOL to complete its examination of the Fiduciary Rule required by the President’s Memorandum.<sup>2</sup> The extension should be at least 60 days. If the DOL believes it will need more than 60 days to complete its review of the Fiduciary Rule, we encourage the DOL to provide a longer extension now so financial services firms can plan appropriately.

In addition, the DOL should delay applicability of all aspects of the Fiduciary Rule, including the definition of “fiduciary” and each condition of the prohibited transaction exemptions. Delaying the Fiduciary Rule in its entirety while the DOL conducts its review is imperative to ensuring that our members can continue to serve retirement savers. The Fiduciary Rule was adopted as a package in recognition that expanding the range of firms considered “fiduciaries” under the Employee Retirement Income Security Act of 1974 and Section 4975 of the Internal Revenue Code of 1986, without providing accompanying prohibited transaction relief, would have prevented many firms from providing critical services and products to retirement savers.

We remain concerned that the Fiduciary Rule will ultimately have the unintended consequence of harming investors saving for, approaching, or in retirement.<sup>3</sup> The Fiduciary Rule includes several inconsistencies with the federal securities laws that will negatively impact sponsors, managers, and platform providers in the separately

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<sup>1</sup> MMI is the national organization for the advisory solutions industry, representing a broad spectrum of investment advisers that manage separate accounts, as well as sponsors of investment consulting programs. MMI was organized in 1997 to serve as a forum for the industry’s leaders to address common concerns, discuss industry issues, and work together to better serve investors. Our membership is comprised of firms that offer comprehensive financial consulting services to individual investors, foundations, retirement plans, and trusts; related professional portfolio management firms; and firms that provide long-term services to sponsor, manager, and vendor firms. MMI is a leader for the advisory solutions industry on regulatory and legislative issues.

<sup>2</sup> Memorandum of February 3, 2017, Fiduciary Duty Rule, 82 Fed. Reg. 9675 (Feb. 7, 2017).

<sup>3</sup> See Letter from Craig Pfeiffer, President & CEO, Money Management Institute, to Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor (July 17, 2015), *available at* <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00427.pdf>.

managed account market by unnecessarily increasing the compliance burdens and costs and risks of providing services to retirement plan and IRA clients. We have already begun to see the negative impacts of the Fiduciary Rule, including financial services firms that have significantly cut back the types and levels of services they are willing to provide to retirement savers.<sup>4</sup> We also expect to see firms drop out of the market entirely or charge clients significantly more for the products and services they make available to retirement savers.

In light of these concerns, we welcome the President's memorandum requiring the DOL to examine the potential negative impacts of the Fiduciary Rule on retirement savers, including their access to investment advice, increased cost, and reduced product availability. We believe that this review will lead the DOL to conclude that the Fiduciary Rule will harm retirement savers. It might also help the DOL identify aspects of the Fiduciary Rule that should be rescinded or revised, or lead the DOL to decide the Fiduciary Rule should be rescinded in its entirety.

In addition to providing the DOL time to complete its review, extending the applicability date now will (1) prevent further harm to retirement savers caused by the Fiduciary Rule; (2) stop needless spending on implementation; and (3) provide more time for financial services firms to develop solutions to the Fiduciary Rule.

1. Prevent Further Harm to Retirement Savers. Our members have worked hard to develop approaches to complying with the Fiduciary Rule that will allow them to provide retirement savers with access to investment advisory offerings. However, they remain concerned that the overly broad definition of "fiduciary" ultimately treats many discussions with prospective clients about available programs and products as fiduciary acts. As a result, many of our members plan to restrict their activities to those that clearly do not involve investment advice when the Fiduciary Rule becomes applicable, rather than risk a later determination that they were acting as fiduciaries and engaged in a prohibited transaction. Moreover, some of our members plan to reduce the products and services they will make available to retirement savers because of the addition of principles-based impartial conduct standards to long-existing prohibited transaction exemptions 86-128 (affiliated transactions), 77-4 (affiliated mutual funds), and 75-1 (underwritings). Extending the applicability date now will allow firms to continue with current offerings, and protect retirement savers from unnecessary interruptions in available products and services, until after the DOL completes its review.
2. Stop Needless Spending on Implementation. Our members have already spent significant amounts of time and money trying to develop offerings and compliance programs that satisfy the Fiduciary Rule's requirements, and will continue doing so through the applicability date. Extending the applicability date now will allow firms to delay any further time and financial expenditures until the DOL decides whether to revise or rescind the Fiduciary Rule.
3. Provide More Time for Financial Services Firms to Develop Solutions. While our members have been working toward the current applicability date, they have found the short implementation period challenging in light of the enormity of the Fiduciary Rule and changes it has caused to the market. The short implementation period has ultimately led many firms to limit their product and services offerings. In addition, the DOL has issued guidance in the form of frequently asked questions since the adoption of the Fiduciary Rule, most recently in January 2017, that has included some unanticipated interpretations of its requirements. Firms have needed to

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<sup>4</sup> See, e.g., Christine Idzelis, *JPMorgan Chase Will Stop Charging Commissions on IRAs Due to DOL Fiduciary Rule*, INVESTMENTNEWS (Nov. 10, 2016), available at <http://www.investmentnews.com/article/20161110/FREE/161119998/jpmorgan-chase-will-stop-charging-commissions-on-iras-due-to-dol>; Greg Iacurci, *Merrill Lynch Eliminates Commission IRA Business in Response to DOL Fiduciary Rule*, INVESTMENTNEWS (Oct. 6, 2016), available at <http://www.investmentnews.com/article/20161006/FREE/161009942/merrill-lynch-eliminates-commission-ira-business-in-response-to-dol>.

reconsider their approaches to complying with the Fiduciary Rule because of these interpretations. Extending the applicability date will allow firms more time to develop better offerings and compliance programs.

We encourage the DOL to expedite its rulemaking to extend the applicability date of the Fiduciary Rule. Retirement savers and our members need certainty regarding the applicability date given the imminent changes to product and services offerings. As April 10, 2017 approaches, firms will begin implementing changes that might ultimately prove unnecessary if the DOL decides to revise or rescind the Fiduciary Rule.

Thank you again for the opportunity to provide our views on the proposed rule to extend the Fiduciary Rule's applicability date. Should you have any questions or require additional information, please feel free to contact me directly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Craig Pfeiffer". The signature is fluid and cursive, with the first name "Craig" being more prominent than the last name "Pfeiffer".

Craig Pfeiffer  
President & CEO  
Money Management Institute