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March 17, 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, N.W.
Washington, D.C. 20210

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

To Whom It May Concern:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules which govern the conduct of those who provide advice to investors.

PIABA strongly opposes the Department of Labor's proposal to delay the applicability date of the Conflict of Interest Rule (the "Rule") and its accompanying exemptions (collectively, the "PTEs"). The Department has solicited comments on its proposal to delay the Rule and the PTEs after President Trump, by Memorandum to the Secretary of Labor, directed the Department to "examine the Fiduciary Duty Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice."

<u>The Rule and PTEs were adopted after significant study and analysis</u>

The Department adopted the Rule and the PTEs after it engaged in the rulemaking process over at least a six year period. The Department filed its initial proposal to amend the definition of "investment advice fiduciary" in October 2010.[1] The Department received over 300 comment letters on the 2010 proposal, held a public hearing at which 38 speakers testified, and then received an additional 60

[1] *See*, Dep't of Labor, *Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice; Final Rule*, 81 Fed. Reg. 20946, 20956 (April 8, 2016) ("DOL Final Rule"), available at http://webapps.DOL.gov/FederalRegister/PdfDisplay.aspx?DocId=28806.

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comments following the public hearing.[2] The Department then met with various stakeholders over the next several years.[3] This process resulted in the Department's withdrawal of the 2010 proposal and submission of a new proposal in April 2015.[4] Throughout 2015, the Department received over 3,000 comment letters and over 300,000 submissions made as part of 30 separate petitions submitted on the new proposal.[5] The Department held four days of public hearings at which over 75 speakers testified.[6] On April 8, 2016, the Department filed its final rule in the Federal Register.[7] It provided for an applicability date of April 10, 2017.[8] The Department delayed the applicability date for full compliance with the terms of the various PTEs to allow firms to continue to benefit from the relevant exemptions without having to meet all of the exemptions' requirements for a number of months.[9] In support of the final rule, the Department prepared a 395 page Regulatory Impact Analysis.[10]

When issuing the Rule, the Department determined that "in light of the importance of the final rule's consumer protections and the significance of the continuing monetary harm to retirement investors without the rule's changes, an applicability date of April 10, 2017, is adequate time for [retirement] plans and their affected financial services and other service providers to adjust to the basic change from non-fiduciary to fiduciary status."[11]

It is important that the Rule and the PTEs move forward and begin the intended protection of retirement investors. Currently, brokers, often called financial advisors by themselves and others, are governed primarily by FINRA rules and state law (which is inconsistent across the country). For example, the FINRA suitability rule requires that a broker only have a "reasonable basis" for making an investment recommendation, and that the recommendation be "suitable" for the investor. Under this suitability standard, a broker can sell a high priced fund to an investor rather than a low cost S&P 500 Index fund if the broker determines that the higher priced fund is also "suitable." The broker is not required to disclose to the investor that there were other lower cost suitable options available or that there were conflicts of interest which may have influenced the broker's recommendation. This conflicted advice costs investors **$17 billion each year**.[12]

Under the Rule, financial advisors are obligated to eliminate conflicts of interest which permeate the financial services industry. Financial advisors are given the ability to manage certain conflicts, so long as they comply with an exemption to the Rule which provides transparency to the investor. No longer will the financial advisor be permitted to recommend an imprudent investment product or one based on the

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[2] *Id.* at 20957.
[3] *Id.*
[4] *Id.*
[5] *Id.* at 20958.
[6] *Id.*
[7] *Id.* at 20946.
[8] *Id.*
[9] *Id.*
[10] *See*, "Regulating Advice Markets; Definition Of The Term "Fiduciary"; Conflicts Of Interest - Retirement Investment Advice; Regulatory Impact Analysis for Final Rule and Exemptions" (April 2016) ("RIA"), available at https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2/conflict-of-interest-ria.pdf.
[11] DOL Final Rule at 20946.
[12] *See*, White House Council of Economic Advisers, "The Effects of Conflicted Investment Advice on Retirement Savings" (Feb. 2015); available at https://obamawhitehouse.archives.gov/sites/default/files/docs/cea_coi_report_final.pdf.

amount of commissions paid, even if it they are suitable, without disclosing the potential conflicts of interest that may be affecting the advice the investor receives.

The Department created the Best Interest Contract Exemption (the "BICE"), which would allow firms to continue receiving commissions and other forms of compensation that are common to retail transactions involving retirement plans, which would otherwise be prohibited under the Rule.[13] However, the BICE also ensures that investors receive retirement investment advice that is in their best interests. Pursuant to the BICE, financial advisors and firms that provide retirement advice may continue to receive commissions, 12b-1 fees, revenue sharing payments from issuers, sales loads or other similar compensation, provided that the investment advice they give is in the investor's best interest and "that they implement safeguards against the harmful impact of conflicts of interest on investment advice."[14]

Delay of the Rule will negatively impact investors

If the Rule and PTEs are not permitted to move forward, retirement investors will continue to be harmed by conflicts of interest. PIABA members represent investors who have been harmed under the current standards. In its prior comment letters to the Department about the rule proposal, PIABA provided numerous stories of investors who had their retirement savings compromised by improper advice; by financial advisors who were governed by the suitability standard.[15] Additionally, then-PIABA President, Joe Peiffer, testified during the Department's public hearings, and offered additional stories of the harms suffered by retirees he personally represented.[16] One set of retirees, who were solicited to cash out their pensions and turn the money over to a broker, ended up losing half their life savings and their ability to receive a steady stream of income from their pensions because of the conflicted advice they received.[17]

Every year investors file thousands of cases against brokerage firms.[18] The most frequently asserted claim in these cases is of breach of fiduciary duty primarily because investors almost uniformly believe their financial advisor is a fiduciary. Investors believe this because firms continue to mislead them, presenting brokers as trusted advisors. In reality, the brokers are usually nothing more than salesmen. It is not until the brokerage firm files its answer in the arbitration that firms finally inform investors of the true nature of their relationship with their broker. As a result, investors continue to trust their brokers, not fully understanding the relationship.

For example, consider the experience of Tom and Shari, a couple from Kansas. Tom is 71 and continues to work as a facilities engineer. Shari is 69 and works as a Program Director for their local church. Tom and Shari were introduced to their broker, Bill, by other members of the church who Bill also advised. Initially, Bill reviewed Tom and Shari's retirement accounts and told them that they were being badly

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[13] DOL Final Rule at 20991.

[14] *Id.* at 21003, 21004.

[15] *See*, PIABA Comment Letter to the Dep't of Labor (July 21, 2015), available at https://piaba.org/system/files/comment_letter_pdfs/DOL%20Best%20Interest%20Rule%20Comment,%20RIN%201210-AB32%20(July%2021,%202015).pdf; PIABA Comment Letter to the Dep't of Labor (Sept. 24, 2015), available at https://piaba.org/system/files/comment_letter_pdfs/DOL%20Best%20Interest%20Rule%20Comment,%20RIN%201210-AB32%20(September%2024,%202015).pdf.

[16] Testimony of Joseph Peiffer (August 11, 2015), available at https://piaba.org/piaba-newsroom/congressional-testimony-statement-record-submitted-united-states-department-labor-emp.

[17] *Id.*

[18] *See*, FINRA Dispute Resolution Statistics, available at http://www.finra.org/arbitration-and-mediation/dispute-resolution-statistics.

mismanaged, they should sue their old broker, and they should trust his professional management. So, of course, they believed him and transferred their accounts to him. Over the next five and a half years, Bill excessively traded the accounts. Shari's IRA was worth over $700,000 when it was transferred to Bill. Five and a half years later, it was worth just over $250,000 – a loss of $450,000. Bill earned almost $230,000 in commissions during this time period which accounted for more than half the losses. Tom's IRA was worth just over $250,000 when it was transferred to Bill. At the end, his IRA was worth $40,000 – a loss of over $200,000. Bill earned $130,000 in commissions on Tom's account. In total, Tom and Shari lost over $600,000 of their retirement funds, while Bill earned $360,000. In order to just cover Bill's fees and just break even, Shari's account would have had to return 33% and Tom's accounts would have had to return 52%. Clearly, Bill placed his own interests front and center.

In order to generate higher income for themselves, brokers will sometimes put investors' retirement money in complex, non-conventional investments such as Real Estate Investment Trusts (REITs) and structured products. Losses on these investments are not readily apparent because the products are not traded on an exchange. These products often have high expenses built into—and hidden in—the product which over the years greatly impacts the value of the investment. These types of investments have a number of risks associated with them, which often make them inappropriate investments for retirement funds.

Susan was invested in such products. Susan is a cashier at Lowes. When her husband passed away in his mid-50s, Susan inherited his pension fund, which was worth half a million, and proceeds from a life insurance policy, in the amount of $450,000. Susan turned over almost $850,000 of those funds to a broker to whom she was introduced to by a co-worker. At their initial meeting, the broker presented his investment strategy, which promised income to supplement what Susan earned as a cashier, as well as growth, so Susan would be able to retire. The broker assured Susan that she would not need to worry about paying her bills or her future income if she entrusted the money to him. So, of course, she did. The broker immediately invested a third of the money in non-traded alternative investments, including three REITs, which earned him commissions of between 9 and 14%. He put another third in an annuity, and the final third in a managed account trading leveraged energy funds and commodities funds. When Susan needed to access her funds to meet her income needs, she found that the investments were not liquid, and she would not be able to access her funds without paying substantial penalties. Certain of the investments could not be sold at all. Although she attempted to do the responsible thing by entrusting her retirement to a broker, Susan was left with investments that had really *only* benefited the broker.

When investors meet with their financial advisors to obtain advice about investing their retirement funds, because they need guidance on how to invest the funds, they expect that they are being given good advice that is for *their* benefit. They do not expect to have to double-check everything the financial advisor is telling them, or to have to investigate the incentives the financial advisor may have for recommending a particular product. Simply put, investors do not understand that their brokers may not be doing what is best for them and that it is their job to figure out what else may be motivating the broker's advice. Yet, under the suitability standard, that is precisely what an investor is expected to do.

Grant, 81, and Dorothy, 77, are retirees who turned over their hard earned retirement funds which they spent a lifetime saving to a broker, Jarrod. They invested $150,000 with Jarrod, who told them he was going to employ the "Bull-Bear Strategy." This strategy involved active trading of an investor's portfolio using primarily individual stocks and exotic Exchange Traded Funds to follow market trends. In the seven months that Jarrod employed this risky strategy, he earned for himself almost $15,000 in commissions, while Grant and Dorothy lost over $25,000 – a sixth of their portfolio.

In all of these instances, and so many more like them, it was clear after-the-fact that the financial advisors involved were primarily concerned with their own income, rather than what was in the best interest of their clients. In each of these cases, the firms disclaimed any liability for any breach of fiduciary duty. Regardless of what the firms say in arbitration or in opposition to the Rule, it cannot be doubted that each of these investors believed their financial advisor was acting in their best interest, and that they trusted the financial advisors. It must be made clear to the financial advisors and to the firms that a retirement investor's interests should be the primary concern of a financial advisor, not how much money the advisor can make from the retirement investor's account.

The Rule is essential to ensure investor protection

The Rule and PTEs are of vital importance because today, IRAs and 401(k) and 403(b) retirement plans have become the primary tool for retirement planning and savings for millions of working Americans. Pensions have become rare, making retirement investors more responsible for ensuring they have the necessary funds to support themselves in retirement. One-time transactions like rollovers will involve *trillions* of dollars over the next five years and can be among the most significant financial decisions families will ever make.[19] As funds are rolled into IRAs from workplace retirement plans, investors will seek guidance and advice from financial advisors.

Retail investors now confront a myriad of choices of how and where to invest. These include, for example: market-tracking, passively managed and so-called ''target-date'' mutual funds; exchange traded funds; real estate investment trusts; various structured debt instruments; insurance products that offer menus of direct or formulaic market exposures and guarantees from which consumers can choose; and, an extensive array of derivatives and other alternative investments. These choices vary widely with respect to risk characteristics, potential return, liquidity, degree of diversification, contractual guarantees and/or restrictions, degree of transparency, regulatory oversight, and available consumer protections. These choices are complex and specialized in nature, using financial terms and formulae beyond the knowledge of the average investor. Only a trained financial professional can sift through the mass of data to determine what is a prudent investment choice and what is not.

Financial advisors who neglect their duties subject investors' hard-earned retirement savings to risk of loss due to self-dealing and imprudent recommendations. For people victimized by their financial advisor's failure, what was meant to be the golden period of their lives often becomes a retirement nightmare. Unfortunately, this has become too common.

The brokerage firms that work with retirement investors have presented themselves in their advertisements and on their websites as trusted counselors and advisors for years.[20] Indeed, to enhance this image, the individuals working for the firms are bestowed with impressive titles such as "Financial Advisor," "Financial Consultant," "Retirement Consultant," and "Wealth Manager."[21] Based on the

[19] "Rollovers" are expected to approach $2.4 trillion cumulatively from 2016 through 2020. *See*, RIA.
[20] *See*, PIABA Report, "Major Investor Losses due to Conflicted Advice: Brokerage Industry Advertising Creates the Illusion of a Fiduciary Duty; Misleading Ads Fuel Confusion, Underscore Need for Fiduciary Standard" (March 25, 2015), available at https://piaba.org/system/files/pdfs/PIABA%20Conflicted%20Advice%20Report.pdf; *see also*, Consumer Federation of America & Americans for Financial Reform, "Financial Advisor or Investment Salesperson? Brokers and Insurers Want to Have it Both Ways" (Jan. 18, 2017) ("CFA/AFR Report"), available at http://ourfinancialsecurity.org/wp-content/uploads/2017/01/Financial-Advisor-or-Investment-Salesperson.pdf.
[21] *See*, CFA/AFR Report at pp. 5-6.

perception created by the firms, investors believe the individuals they are dealing with will act in their best interests.

The industry is divided in its reaction to the Rule, and there are firms ready to comply. To now delay the Rule and PTEs will punish those firms that have worked diligently over the past year to ensure they were ready to comply as of the April 10 applicability date. A delay will reward the firms that have chosen not to do what the regulations have required. The Department should not send the message that regulations it promulgates do not need to be implemented.

As stated above, there are firms ready to comply with the Rule and PTEs. Some in the industry have responded to the Rule positively. Merrill Lynch wholeheartedly embraced the Rule, with both its advertisements and in its messaging to customers, stating:

> We're committed to a higher standard for retirement accounts. We view the Department of Labor Fiduciary Rule as a positive step for the industry and great news for investors. We support it wholeheartedly.[22]

Morgan Stanley decided it would continue to offer its clients choices, stating:

> Morgan Stanley's core values of putting clients first and doing the right thing are behind our plan for implementing the Department of Labor's upcoming fiduciary rule for retirement accounts. …We believe our advisors can most effectively uphold a fiduciary standard of care and work in clients' best interests by continuing to offer choice.[23]

Several other firms have announced their plans for complying with the Rule, including Ameriprise, LPL, Cambridge, Cetera, Raymond James, Mass Mutual, Lincoln Financial Distributors and Lincoln Financial Network and Wells Fargo.[24]

In examining the efforts made to date by the industry, a report by Consumer Federation of America determined that:

(i) the DOL rule is already eliminating the most harmful conflicts associated with commission-based advice without eliminating access to commission-based advice;
(ii) despite dire predictions to the contrary, most firms are continuing to offer commission-based retirement investment advice; and

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[22] *See*, Merrill Lynch tweet (Nov. 10, 2016), available at https://t.co/OMw73LvR6d.
[23] Morgan Stanley Press Release, "Morgan Stanley to Preserve Client Choice for Retirement Accounts" (Oct. 26, 2016), available at https://www.morganstanley.com/press-releases/morgan-stanley-to-preserve-client-choice-for-retirement-accounts; *see also*, Morgan Stanley article "Morgan Stanley Preserves Client Choice in Response to DOL Rule" (Oct. 26, 2016) ("Moving forward, our clients will continue to have access to commission-based retirement brokerage accounts with recommendations from us that will be consistent with the DOL Fiduciary Rule and Best Interest Contract Exemption…Morgan Stanley…will also offer clients the choice of fee-based retirement account arrangements."), available at http://www.morganstanley.com/articles/DOL-fiduciary-rule.
[24] *See*, 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), available at http://consumerfed.org/wp-content/uploads/2017/01/1-31-17-DOL-Rule-Delivering-Benefits_Fact-Sheet.pdf.

(iii) far from driving up investors' costs, the rule is already responsible for significant cost reductions.[25]

The industry has not offered legitimate reasons for delaying applicability of the Rule and PTEs

The reasons offered for delaying the Rule are unpersuasive. When adopting the Rule, the Department considered the effect the Rule may have on small investors, and their ability to receive quality advice. In its Regulatory Impact Analysis, the Department determined:

> This analysis concludes that the final rule and exemptions will benefit small plan and IRA investors. While the exact trajectory and future shape of advisory markets is uncertain, and some frictions can be expected in the near term, the Department believes that quality, affordable advisory services will be amply available to small plans and investors under the final rule and exemptions.[26]

The Department already considered the arguments made by the industry that small investors may be priced out of the market, and responded to and ultimately rejected them.

If the Rule is implemented, small investors will still have the ability to receive advice. Contrary to allegations by some industry members, the adoption of a fiduciary standard does not make the provision of advice cost prohibitive. Several states (and a territory) have long considered brokers fiduciaries under state common law.[27] Investors in those jurisdictions have full access to investment advice and services. This was confirmed by a 2012 study which examined whether there were differences in the services available to investors in states that have fiduciary standards and those who do not. The study found no statistically significant difference between the two types of states when it came to servicing lower wealth clients, including the ability to provide a broad range of products including those that provide commission based compensation.[28]

Likewise, the SEC found that, even if a fiduciary standard was adopted for brokers, retail investors would "continue to have access to the various fee structures, account options, and types of advice that investment advisers and broker-dealers provide."[29]

The costs of compliance associated with a fiduciary duty standard are not meaningfully different from those associated with the existing suitability rule. The same 2012 study found that there is no statistically significant increase in compliance costs in states in which there is a clear fiduciary standard and ones in which there is no fiduciary standard.[30]

In any case, the quality of advice for small investors is riddled with conflicts of interest. The fiduciary model would act to correct this and ensure a customer's best interest is paramount to advisor

[25] *Id.*
[26] RIA at 312.
[27] *See*, e.g. California, Georgia, Florida, Missouri, Puerto Rico, South Carolina, and South Dakota.
[28] *See*, Michael Finke and Thomas P. Langdon, "The Impact of the Broker-Dealer Fiduciary Standard on Financial Advice" (Mar. 9, 2012), available at https://www.onefpa.org/journal/Pages/The%20Impact%20of%20the%20Broker-Dealer%20Fiduciary%20Standard%20on%20Financial%20Advice.aspx.
[29] *See*, "Staff Study Recommending a Uniform Fiduciary Standard for Conduct for Broker-Dealers and Investment Advisers" (2011), available at https://www.sec.gov/news/press/2011/2011-20.htm.
[30] *See*, Finke and Langdon.

compensation. While the Rule will and has already required restructuring 'business as usual' in the brokerage industry, any costs associated with the change are largely overshadowed by the benefits investors will receive by lower fees and better financial advice free from conflicts.

Small investors have a right, and more importantly, a need, to be protected. In retirement, the vast majority of these investors need the money they have saved to fund their retirement, have little or no tolerance for risk, and cannot afford to lose money due to a broker's conflicted advice. These investors are also at a disadvantage because if they do lose money, they may not be able to obtain any meaningful recovery against the advisor or the firm. Indeed, investors in small cases do not fare as well as other investors in FINRA arbitration, averaging approximately a 10% lower win rate;[31] which is meaningful because investors generally do not fare that well overall in FINRA arbitration.

Investors will continue to have options with respect to investing their retirement funds. Firms have already embraced and adopted varying approaches in terms of implementing the Rule. Some will continue to offer commissions, others will transition to fee-based accounts. A full range of investments remain available to investors, the only change will be that the individual selling the investments will have to put the best interests of the investor ahead of their own.

Conclusion

Delaying implementation costs investors money every day. SaveOurRetirement.com estimates that retirement savers lose between $57 million and $117 million every day due to conflicted investment advice, amounting to at least $21 billion annually.[32] The Council of Economic Advisers estimate Americans are suffering $17 billion in losses annually due to conflicted advice they receive from financial advisors.[33] It is imperative that the Rule become applicable, and retirement investors receive the protections that they deserve.

It is also worth noting that the Rule and PTEs have already been reviewed by three separate federal courts following challenges by various industry members.[34] In each case, the federal judge determined that the Rule and PTEs should go forward.[35] In considering whether to issue an injunction to delay implementation of the Rule and PTEs, Judge Crabtree stated:

> [A]n injunction will lead to confusion about the law and likely produce unwarranted delay. This is not in the public's interest. Any injunction thus will produce a public

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[31] *See*, Securities Arbitration Commentator 2013 Awards Survey, available at http://www.seyfarth.com/dir_docs/publications/SecuritiesArbitrationCommentator.pdf

[32] *See*, Save our Retirement Comment Letter (May 8, 2015), available at http://saveourretirement.com/cms/wp-content/uploads/2015/02/DOL-SOR-Letter-Comment-Period-Request-5-8-15.pdf.

[33] *See*, White House Council of Economic Advisers, "The Effects of Conflicted Investment Advice on Retirement Savings." "Conflicted advice" refers to advice given on particular investment products where the financial advisor is compensated in fees and commissions that depend on which investment product the customers buys.

[34] *National Association for Fixed Annuities v. Perez* (D.C. 2016) (No. 16-CV-01035); *Chamber of Commerce v. U.S. Dep't of Labor* (N.D. Tex. 2016)(No. 16-CV-01476-M) consolidated with *American Council of Life Insurers v. U.S. Dep't of Labor* (No. 16-CV-01530-C) and *Indexed Annuity Leadership Council v. Perez* (No. 16-CV-01537-N); and *Market Synergy Group, Inc. v. U.S. Dep't of Labor* (Kan. 2016)(16-CV-04083).

[35] *National Association for Fixed Annuities v. Perez,* 2016 WL 6573480 (D. D.C. 2016); *Chamber of Commerce v. U.S. Dep't of Labor,* 2017 WL 514424 (N.D. Tex. 2017); and *Market Synergy Group, Inc. v. U.S. Dep't of Labor,* 2017 WL 661592 (D. Kan. 2017).

> harm that outweighs any harm that plaintiff may sustain from the rule change. The DOL has determined that the rule changes will benefit retirement investors throughout the United States by requiring investment advisers to act in the best interest of those investors. Congress authorized the DOL to evaluate these competing interests and it has concluded that significant public interests favor the proposed regulatory changes. As already explained, evidence in the administrative record supports the DOL's determination and the court finds no basis for contradicting those findings.[36]

This decision should be especially relevant to the Department's consideration of delay. The Department has previously justified the Rule and the implementation period. Nothing has changed which would justify a reconsideration at this time. As the Department itself points out, underperformance of investments due to poor fund selection could cost IRA investors between $95 billion and $189 billion over the next 10 years, and that implementation of the rule could reduce these costs to investors between $33 billion and $36 billion.[37] Conversely, complying with the Rule and PTEs would cost the industry $16 billion over ten years.[38] Considering the cost benefit analysis, there is no reason to delay the Rule and cost retirement investors so much of their hard earned money.

Accordingly, the Department should proceed with the applicability timeline set forth in the Rule and PTEs and ensure that investors are protected.

Very truly yours,

Marnie Lambert
PIABA, President

[36] *Market Synergy Group, Inc. v. U S. Dep't of Labor*, No. 16-CV-4083-DDC-KGS, 2016 WL 6948061, at *30 (D. Kan. Nov. 28, 2016).
[37] Dep't of Labor, *Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice; Proposed Delay of Applicability Date*, 82 Fed. Reg. 12319, 12323 (March 2, 2017), available at https://www.federalregister.gov/documents/2017/03/02/2017-04096/definition-of-the-term-fiduciary-conflict-of-interest-rule-retirement-investment-advice-best.
[38] *Id.*