April 13, 2017

Filed Electronically
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Examination of the Fiduciary Rule in Accordance with the President's Memorandum (RIN 1210-AB79)

Dear Sir or Madam:

Great-West Financial ("Great-West")[1] appreciates the opportunity to share our comments as the Department of Labor, Employee Benefit Security Administration (DOL) considers the questions raised by President Trump in a Memorandum dated February 3, 2017 (Memorandum).

The Memorandum instructed the DOL to determine if the Definition of the Term Fiduciary; Conflict of Interest Rule – Retirement Investment Advice" (81 Fed. Reg. 20946 (April 8, 2016)), (the Fiduciary Rule) as published in the Federal Register on March 2, 2017 (82 Fed. Reg. 12319) adversely affects the ability of Americans to gain access to retirement information and financial advice. It also asks the DOL to prepare an updated economic and legal analysis, taking into consideration a number of factors. If the DOL determines that the Fiduciary Rule is inconsistent with the priorities outlined in the Memorandum, the DOL is instructed to rescind or revise the Fiduciary Rule. We believe the questions in the Memorandum should be answered in the affirmative and the DOL should consider rescission or revision.

Our mission at Great-West is to support the retirement security of American workers and investors, whether those workers and investors are saving for retirement through workplace plans, annuity contracts, or IRAs, and whether the investments that drive retirement readiness are funds or insurance contracts. Towards that end we support the DOL's core goal of imposing a "best interest" standard of care on people providing investment advice for a fee to retirement savers. We are concerned, however, that the Fiduciary Rule as currently drafted will result in many retirement savers receiving less help or paying more for the help they currently receive. Great-West provided comments when the DOL re-proposed these regulations and related proposed Prohibited Transaction Exemptions. The comments in this letter are in response to the questions raised in the Memorandum of February 3, 2017.

[1] Great-West Financial is a leading provider of insurance, annuities, and investment products through Great-West Life & Annuity Insurance Company and its subsidiaries and affiliates.

Question 1: Whether the anticipated applicability of the Fiduciary Duty Rule has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice.

We are concerned with the breadth of activities impacted under the Fiduciary Rule and the uncertainty within the regulated community regarding its practical application. We believe this will result in either a scaling back of services that workers and investors receive today, or an increase in the cost of those services. It is notable that while the Fiduciary Rule will clearly cause many call center conversations that are not fiduciary conversations today to become fiduciary, very few service providers have indicated that they will accept fiduciary status for their call center employees. The obvious alternative is that the level of help offered in those conversations will be scaled back. Similarly, service providers are evaluating their service offerings, particularly in the small end of market.

We believe the Fiduciary Rule will make it more difficult to speak to workers and investors about retirement assets and investment options. The onerous compliance and reporting requirements, as well as enforcement through a private right of action, will serve to increase costs and therefore decrease access to legitimate investment advice for low and middle income workers and investors. Ultimately, the Fiduciary Rule will serve to hinder discussions about retirement, at a time when workers and investors are more and more individually responsible for insuring they have adequately saved for retirement.

Question 2: Whether the anticipated applicability of the Fiduciary Duty Rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees.

The Fiduciary Rule has called into a question a wide array of compensation practices (both external fees and internal incentive compensation practices) that have been in wide use for years, there is still uncertainty regarding what alternatives are considered acceptable. This has caused, and will continue to cause if not, disruptions to workers, investors, and retirees.

Problems with the Best Interest Contract Exemption ("BIC")

There is uncertainty around the application of the BIC which is the most broadly available mechanism for dealing with conflicted compensation.

While conceptually we support the DOL's efforts to create a broad based exemption permitting conflicted compensation to be received with adequate disclosure and protection for investors, we believe the current BIC to be too restrictive, burdensome and costly. Core problems we see are:

- The BIC is limited in its availability and is not available to cover compensation with respect to all advice covered by the rule.
- The disclosure requirements are burdensome. A simple, streamlined disclosure at the time advice is provided would be far more effective than the complex and costly disclosures currently in the Fiduciary Rule. For example, while we believe it's important for clients to understand whether conflicts exist in fee arrangements, the detailed descriptions of third party payments currently required adds significant cost to the disclosure with little or no additional benefit. The public website requirements, as well as the on demand and annual transactional disclosure requirements, have the potential of creating significant disruptions for the same reason. The warranties currently required in the disclosures also increase the likelihood of litigation beyond what is contemplated in the ERISA statute.
- The method for compliance with impartial conduct standards severely limits flexibility in compensation practices while still adhering to a best interest standard. It would be more appropriate to require that financial institutions adopt and comply with written policies and procedures designed to insure that its Advisers will act in the best interest of advice recipients without being prescriptive about goals and compensation practices.
- The provisions concerning sale of proprietary products are burdensome, disruptive to the industry, and invite litigation. While it is appropriate to disclose the potential for conflicts of interest when proprietary products are sold, there seems to be little reason to treat those conflicts differently than any other.

The goals of providing adequate disclosure and protecting investors from harm resulting from conflicted compensation can be accomplished in a much clearer and less costly manner. We would welcome the opportunity to discuss possible alternatives with the DOL.

Fewer/more limited services available to small accounts

It costs more to provide fiduciary services than non-fiduciary services due to the additional training, licensing and monitoring as well as additional liability and insurance costs inherent in fiduciary services. Internal data would indicate that the call center compensation and training costs associated with meeting the new standards under the Fiduciary Rule represents a 39% increase overcurrent costs.

The Fiduciary Rule does not allow individual savers and the people they're seeking help from to agree that advice will not be fiduciary in nature, even with full disclosure of that fact and any potential conflicts of interest that may be involved. The cost of fiduciary advice is too expensive for many IRA accounts so they will be left with no help at all or very limited and generic help. The Department's original economic analysis does not appear to include any

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cost estimate for the difference in value or retirement outcomes between generic or "robo" advice, and personalized advice.

Question 3: Whether the Fiduciary Duty Rule is likely to cause an increase in litigation and an increase in the prices that investors and retirees must pay to gain access to retirement services.

The Fiduciary Rule will clearly result in an increase in litigation. By increasing the number of people serving plans and participants who will become fiduciaries, it increases the number of potential defendants who can be sued for a breach of fiduciary duty.
The BIC creates a new contractual cause of action for IRA owners that will also increase litigation. In both the BIC and the Fiduciary Rule there are many new standards which are disruptive and difficult to effectively implement (for example, what does it mean to provide advice "without regard" to one's own interest if you are in the business of providing advice) as well as a number of terms and standards that are unclearly defined (such as where education ends and advice begins, etc.), all of which provide fertile ground for plaintiff's lawyers to initiate litigation.

By some estimates the BIC alone is likely to cause an annual settlement cost in ERISA class action lawsuits of between $70 and $150 million.[2] Workers and investors are not the primary beneficiaries of these awards, as a Fiduciary Benchmarks survey conducted in 2016 concluded that out of $698 million collected attorneys received $204 million and the average investor award was $116.

Final Rule: Extension of applicability date

We would also like to take this opportunity to comment on the final rule extending the applicability date of the Fiduciary Rule for 60 days, or until June 9, 2017 (82 Fed. Reg. 16902 (April 7, 2017)). We appreciate and welcome the delay granted, but would also urge that the Fiduciary Rule not become applicable until after the DOL has completed the examination called for in the Presidential Memorandum. Should, as the result of that examination, the DOL begin a new notice and comment period on a proposed rule revising or rescinding the Fiduciary Rule, any applicability date should be further delayed until the new rulemaking process has been completed.

As discussed above, making the Fiduciary Rule applicable will result in the very limitations on retirement savings and education, industry disruption and litigation risk that the administration was seeking to avoid when it directed the DOL to conduct its review and examination.

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[2] Morningstar "Financial Services Observer", February 2017.

Allowing the Fiduciary Rule to go into effect prior to the completion of the mandated review would appear to run contrary to the intent of the Presidential Memorandum.

In the final rule published on April 7, 2017; the DOL has indicated that: "Following completion of the examination, some or all of the Rule and PTEs may be revised or rescinded, including the provisions scheduled to become applicable on June 9, 2017." This would result in an unnecessary disruption to the industry. Workers and investors would have been subjected to a rule that adversely affected their ability to gain access to retirement information and products. Retirement service providers would be forced to make multiple changes to their business models and the systems that support delivery of their service offerings. This would result in expenses that could have been avoided and would create confusion for plan sponsors and participants. We strongly urge the DOL not to allow the Fiduciary Rule or its related Prohibited Transaction Exemptions to become effective prior to the full completion of the examination mandated by the Presidential Memorandum.

At Great-West, we are in the business of helping people save for a financially secure retirement. The products and services we create and sell are designed for that purpose and we measure our success by how effective we are in accomplishing that goal. It seems reasonable and appropriate that a rule, while ensuring that best interest standard is adhered to with simple and understandable disclosure of fees and potential conflicts, allow service providers the ability to communicate, sell products and services, provide appropriate incentives to employees for retaining existing accounts or selling new ones, and maintain a reasonable level of compliance cost so that we can invest more robustly in the development of new tools to help people save for retirement. Insurance and annuity providers, and the clients they serve, need certainty and clarity.

I look forward to the DOL's reconsideration of the Fiduciary Rule and would welcome the opportunity to discuss alternatives.

Sincerely

Robert K. Shaw

President, Individual Markets