July 21, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW,
Washington, D.C. 20210

Re: RIN 1210-AB82, Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions – Question 1

To Whom It May Concern:

We are writing on behalf of Americans for Financial Reform in response to Question 1 of the Department of Labor's (DOL) Request for Information (RFI) concerning the Fiduciary Rule and Prohibited Transaction Exemptions. AFR is a coalition of over 200 national, state, and local groups who have come together to advocate for reform of the financial industry. Members of AFR include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.[1]

Question 1 of the RFI asks about a possible delay in the current January 1, 2018 applicability date of the provisions in the Best Interests Contract (BIC) Exemption, Principal Transactions Exemption, and amendments to PTE 84-24, including the potential costs and benefits of such a delay to financial services providers and investors.

AFR strongly opposes a delay in the January 2018 date of implementation of these provisions. In our previous letter to the DOL we described the very large benefits the Fiduciary Rule will bring to investors, which are supported by a wide range of evidence including the DOL's own Regulatory Impact Analysis.[2] These benefits cannot be realized without a rule that is legally enforceable and backed by mechanisms to ensure compliance. The proposed delay in the requirement for BIC contract execution and related enforceable promises, as well as the requirement to implement internal policies and procedures to ensure investor protection, strike at the heart of the enforcement mechanism for this rule. Without the legal rights granted by the BIC and other related protections, investors in many areas of the market, crucially the IRA market, will lack a meaningful enforcement backstop to the commitment of impartial conduct by

[1] A complete list of AFR's coalition members is available at http://ourfinancialsecurity.org/about/our-coalition/

[2] Americans for Financial Reform, "Letter on Definition of the Term Fiduciary – Delay of Applicability Date, RIN 1210-AB79", March 17, 2017. Available at http://bit.ly/2ty5rxK .

1620 L Street NW 11th Floor Washington, DC 20006 | 202.466.1885 | ourfinancialsecurity.org

advisors. This threatens to make the promise of impartial conduct by providers of investment advice a hollow one.

The damage to enforcement mechanisms under the rule that would be created by extending the January 1st compliance date is only heightened by stated current policy of the DOL, Treasury Department, and Internal Revenue Service of not enforcing or penalizing violations of the impartial conduct standards during the transition period. Presumably this policy would continue as well. Thus, investors in e.g. the IRA market would be deprived both of legal rights to impartial advice that could be enforced through the court system, and other potential administrative enforcement mechanisms.

The act of delaying critical enforcement provisions will also once again call into doubt the DOL's commitment to establishing and enforcing meaningful impartial conduct standards for investment advice. Crucially, this will create and reinforce uncertainty in the market, among both providers and investors, and delay policy changes by advice providers that are needed to implement the rule. For example, advisers may delay implementation of changes in compensation systems and other policies and procedures needed to support the impartial conduct commitment. Indeed, a lengthy or indeterminate extension in the January 1st date almost invites providers of investment advice to stall or postpone changes in their systems in the hope that the Department of Labor may reverse the rule.

This kind of delay and uncertainty is costly, confusing to investors, and also threatens to create a self-reinforcing cycle where delays in compliance by providers are then cited as evidence for still further delays in the full implementation of the rule by the DOL. Indeed, in its previous delay of the April 10th applicability date for initial applicability of impartial conduct standards, the Department cited to stalling by providers in their implementation of the rule as evidence that the DOL should in turn postpone the rule's applicability.[3] Postponing the applicability date of key mechanisms for the enforcement of the rule and the establishment of supporting policies and procedures by wide swathes of the market will only recreate and perpetuate this cycle of stalling, delay, and market uncertainty.

Of course, the harm created by any delay in the January 1st applicability date will depend on the length of the delay. A brief delay of weeks or at most a few months with a clear commitment to a date certain of applicability would limit the damage created by increased market uncertainty and

[3] Final Rule, extension of applicability date, 82 Fed. Reg. 16905 (April 7, 2017), http://bit.ly/2oFQTG9 ("The Department is also concerned that many firms may have reasonably assumed that the Department is likely to delay implementation as proposed and may, accordingly, have slowed their compliance efforts. As a result, rigid adherence to the April 10 applicability date could result in an unduly chaotic transition to the new standards as firms rush to prepare required disclosure documents and finalize compliance structures that are not yet ready, resulting in investor confusion, excessive costs, and needlessly restricted or reduced advisory services.")

the lack of a meaningful enforcement backstop for investors. However, a longer delay, or especially any delay which appears to make the final date of applicability uncertain in any way, would encourage advice providers to in turn delay their own implementation of supporting policies and would leave investors in a grey area as to whether impartial conduct commitments were truly meaningful. This is especially true for an indefinite delay in applicability, or any delay which hinted at becoming indefinite (e.g. mentioning a date but leaving open the possibility for further extensions). Such a delay in the applicability of these key enforcement measures would call the DOL's commitment to the rule itself into complete uncertainty and must be avoided.

In sum, the DOL should proceed with the implementation of the BIC exemption, the amendments to PTE 84-24, and the Principal Transactions Exemption on January 1st 2018, which is the date it has previously committed to. Any failure to do so will directly harm investors by depriving them of effective enforcement of key protections for the integrity of their retirement advice, and will also create harmful uncertainty as to the DOL's commitment to enforcement and implementation of the fiduciary rule.

Thank you for your consideration of these comments. Should you have any questions, please contact AFR's Policy Director, Marcus Stanley, at 202-466-3672 or marcus@ourfinancialsecurity.org.

Sincerely,

Americans for Financial Reform