AFR Americans for Financial Reform

September 15, 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: Notice of proposed amendments to PTE 2016-01, PTE 2016-02, and PTE 84-24

To Whom It May Concern:

We are writing on behalf of Americans for Financial Reform in response to the Department of Labor's ("DOL") Notice of Proposed Amendments (the "amendments") 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]

These amendments would significantly delay the applicability of key enforcement mechanisms for the DOL's conflict of interest ("fiduciary") rule. In previous comments to the DOL we have described the major benefits to investors that would be created by the implementation of the fiduciary rule and the dangers of delaying either the rule or its key enforcement mechanisms.[2] These benefits are outlined and supported in your own Regulatory Impact Analysis (RIA).[3] The Economic Policy Institute has used the RIA data to estimate that an 18 month delay in full implementation of the fiduciary rule would cost investors over $10 billion.[4]

Despite the extensive evidence of benefits from the fiduciary rule, the DOL now proposes to delay key enforcement mechanisms for the rule by 18 months, from January 1st 2018 to mid-2019. As we stated in our previous letter to you, the delay of these enforcement provisions would totally undermine the implementation of an enforceable fiduciary rule in key areas, particularly

[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. http://bit.ly/2ty5rxK ; Americans for Financial Reform, "Letter On Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions, RIN 1210-AB82", July 21, 2017. http://bit.ly/2yc2hyq
[3] Department of Labor, "Regulatory Impact Analysis For Final Rule and Exemptions", United States Department of Labor, April 2016. http://bit.ly/2mT9Gfq
[4] Economic Policy Institute, "An 18 Month Delay Of The Fiduciary Rule Will Cost Retirement Savers $10.9 Billion", July 13, 2017. http://bit.ly/2y3vqLi

the IRA market. Providers of investment advice would lose a key incentive for compliance, and would not be held accountable if they did not comply.

This is particularly true since the proposal itself is justified by stating that "the delay avoids obligating financial services providers to incur costs to comply with conditions, which may be revised, repealed, or replaced".[5] This proposal directly signals industry that it need not fully comply with conditions crucial to effective fiduciary protections, such as elimination of unmanageable conflict of interests from business practices, and that the DOL may end the applicability of such conditions to significant parts of the industry. Given this justification of the delay, it would be foolish to expect that financial services providers would not take advantage of the lack of enforcement provisions in order to avoid compliance measures over the 18 month period of the delay.

This justification also fundamentally contradicts the brief Regulatory Impact Analysis provided by the rule, which states:[6]

> "The Department believes that investor losses from the proposed transition period extension could be relatively small. Because the Fiduciary Rule and the Impartial Conduct Standards became applicable on June 9, 2017, the Department believes that firms already have made efforts to adhere to the rule and those standards. Thus, the Department believes that relative to deferring all of the provisions of the Fiduciary Rule and PTEs, a substantial portion of the investor gains predicted in the Department's 2016 regulatory impact analysis of the Fiduciary Rule and PTEs (2016 RIA) would remain intact for the proposed extended transition period."

The assumption that all firms will voluntarily comply with impartial conduct standards in the absence of an enforceable contract and other enforcement provisions is ungrounded and unsubstantiated. It is also directly in contradiction with other parts of the proposal that justify the delay through savings that will be gained through firms' ability to avoid compliance with measures designed to ensure fiduciary protections.

This proposal continues a disturbing recent pattern in which DOL proposes fiduciary rule measures that introduce uncertainty into the market, and then justifies these measures by reference to the same uncertainty they have created. In this case, the proposal announces to industry that the DOL intends to significantly change the rule, and then cites industry claims that uncertainty concerning the DOL's changes may lead compliance efforts to be a "waste of time and momey".[7] This amounts to manipulating the rulemaking process in order to generate costs

[5] CFR 41371
[6] CFR 41372
[7] CFR 41368

which then are used as part of the justification for changing the rule. Yet these costs are not inherent to the rule itself, which the DOL's own RIA shows generates substantial net benefits. They are instead generated by the DOL's own efforts to weaken or negate the rule.

Instead, the DOL should comply with the Administrative Procedures Act and implement and enforce the completed rule. If the DOL still wants to consider changing the rule, it may do so after the rule has gone into effect as finalized, and only if justified by sound information about the impact of the rule as implemented on investors. Signaling that the rule will be changed and using the resulting confusion and uncertainty as a cost justification for delaying the rule is an illegitimate manipulation of the APA process.

As AFR and others have documented, even prior to its full implementation, the fiduciary rule is already creating investor-friendly changes in financial markets. If the rule was fully implemented and enforced, it is extremely likely that these investor benefits would become even more obvious and the justification for large changes to the rule would become even weaker. The DOL's eagerness to delay the rule, as well as indications to industry that it intends to undo key parts of the rule, reflect an improper prioritization of sell-side interests in avoiding changes to their current conflicted business models over the needs of investors.

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