JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

MAXINE WATERS, CA, RANKING MEMBER

March 17, 2017

Acting Secretary Ed Hugler
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Acting Secretary Hugler:

We write in support of the Department of Labor's (DOL's) proposal to delay its fiduciary rule applicability date for 60 days.[1] Such a delay is necessary to review the rule's scope and assess potential harm to investors, disruptions within the retirement services industry, and increases in litigation, as required by the Presidential Memorandum signed by President Trump on February 3, 2017.[2]

Members of the House Financial Services Committee have long been concerned with the DOL fiduciary rule's impacts on retail investors and the U.S. capital markets. As such, we have advocated that the expert regulator – the Securities and Exchange Commission (SEC) – should craft an applicable rule. In the 114th Congress, the House of Representatives passed H.R. 1090, the Retail Investor Protection Act, which prohibited the DOL from issuing a rule until the SEC first promulgated a rule pursuant to Section 913 of the Dodd-Frank Act (P.L. 111-203). Additionally, Congress approved a bipartisan resolution of disapproval on the DOL's final fiduciary rule, which, unfortunately was vetoed by President Obama.

The DOL fiduciary rule as written will harm the very people it claims to protect: low- and middle-income American families trying to save for retirement. With its onerous compliance and reporting requirements as well as enforcement through a private right of action, customers will see fewer choices, increased costs, and decreased access to reliable and affordable investment advice. We have already seen an adverse market reaction leading up to the April 10, 2017, applicability date with companies leaving the brokerage business, decreasing their product offerings, and switching to only fee-based advice. Additionally, recent studies report that the DOL fiduciary rule already has affected 92,000 financial advisers and up to 14 million customers, with total compliance costs of $31.5 billion.[3]

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[1] Definition of the Term "Fiduciary"; Conflict of Interest Rule-Retirement Advice; Best Interest Contract Exemption (Prohibited Transaction Exemption 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016-02); Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, 84-24, and 86-128, 82 Fed. Reg. 12319 (Mar. 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

[2] *See* Presidential Memorandum on Fiduciary Duty Rule (Feb. 3, 2017), *available at* https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule.

[3] *See* Sam Batkins, "Fiduciary Rule Has Already Taken Its Toll: $100 Million In Costs, Fewer Options," American Action Forum (Feb. 22, 2017), *available at* https://www.americanactionforum.org/insight/fiduciary-rule-already-taken-toll-100-million-costs-fewer-options/.

Because of the negative impact on retail investors and the retirement services marketplace, a delay of at least 60 days is necessary and appropriate to give the DOL time to complete this review directed by the President. We strongly believe that a longer delay could be necessary to implement the review's findings, as the DOL notes in its proposal.[4] Extending the length of the delay beyond the currently proposed 60 days will provide the DOL with the needed flexibility to ensure compliance with the review directed by the Presidential Memorandum.

Lastly, we urge the DOL to make the delay's applicability date effective upon publication in the *Federal Register*. Good cause exists to allow such immediate effectiveness in order to prevent additional consequences to the retail investment market.[5]

Thank you for your attention to and consideration of this important matter.

Sincerely,

JEB HENSARLING Chairman	ANN WAGNER Chairman Subcommittee on Oversight and Investigations	BILL HUIZENGA Chairman Subcommittee on Capital Markets, Securities and Investment

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[4] *See* Definition of the Term "Fiduciary", 82 Fed. Reg. 12319, 12320; "There are approximately 45 days until the applicability date of the final rule and the PTEs. The Department believes it may take more time that that to complete the examination mandated by the President's Memorandum. Additionally, absent an extension of the applicability date, if the examination prompts the Department to propose rescinding or revising the rule, affected advisers, retirement investors and other stakeholders might face two major changes in the regulatory environment rather than one. This could unnecessarily disrupt the marketplace, producing frictional costs that are not offset by commensurate benefits. This proposed 60-day extension of the applicability date aims to guard against this risk. The extension would make it possible for the Department to take additional steps (such as completing its examination, implementing any necessary additional extension(s), and proposing and implementing a revocation or revision of the rule) without the rule becoming applicable beforehand. In this way, advisers investors and other stakeholders would be spared the risk and expenses of facing two major changes in the regulatory environment."

[5] *See* 5 USC §808(2).

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