September 15, 2017

Office of Exemption Determinations
Employee Benefits Security Administration
Attention: D-11712, 11713, 11850
U.S. Department of Labor
200 Constitution Avenue NW, Suite 400
Washington, DC 20210

RE: Best Interest Contract Exemption, etc.; Extension of Transition Period and Delay of Applicability Dates (Docket No. EBSA-2017-0004-0002)

To Whom It May Concern:

This comment is submitted by the Center for American Progress, or CAP, an independent nonpartisan policy institute that is dedicated to improving the lives of all Americans, through bold, progressive ideas, as well as strong leadership and concerted action. As part of its efforts to expand opportunity and mobility, CAP considers public issues that concern families' financial and social well-being, and promotes policies that champion the common good over narrow self-interest.

We are concerned about a further delay in the applicability date of the fiduciary rule and its related prohibited transaction exemptions. The merits of the rule, and its urgency, both remain clear to address the nation's retirement security crisis.[1] The Department of Labor's analyses have not changed the underlying economics of the rule's full implementation providing benefits to savers and retirees that greatly exceed any diminished interim regulatory compliance costs.[2] Indeed, delayed implementation until 2019 is expected to cost savers and retirees over $10 billion over the next 30 years according to projections by the Economic Policy Institute based on DOL's own Regulatory Impact Analysis.[3] Meanwhile, firms have, by and large, stated in quarterly earnings calls that they are well-prepared to comply with the rule.[4]

This raises serious questions about the rationale for a delay. Delaying the rule and related provisions—while signaling a willingness to revisit or repeal them—has created and accelerated the very uncertainty that the Department cites in its justification to delay the rule further. Uncertainty also exists for current and potential clients who struggle with the varying expectations and requirements governing financial professionals. Many do not understand the various professional classifications, standards, and compensation practices that exist in the marketplace even when these aspects of advice are explained through disclosure.[5] And at this point, any further delay of the rule only competitively punishes firms that have made every effort to comply, and encourages affected entities not to take steps toward implementation.

The public overwhelmingly demands moving in the direction of conflict-free advice. Earlier this year, a national survey by investment firm Financial Engines found that 93 percent of respondents considered it important for all advisors providing retirement advice to be legally required to put their client's best interest first.[6] And approximately 2 in 5 respondents in this survey stated that they would either switch advisors or stop working with an advisor altogether if they found out that their advisor was not a fiduciary.[7] Instead of increasing costs and confusion for savers and retirees while rewarding firms for not moving toward a fiduciary standard, the Department of Labor should move forward with rule implementation without additional delay.

Thank you for providing the opportunity to comment on this proposal. If you have any questions or would like any additional information, please contact Joe Valenti at jvalenti@americanprogress.org.

Sincerely,

Joe Valenti
Director of Consumer Finance
Center for American Progress

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[1] Joe Valenti, "The Fiduciary Rule Would Put Savers and Retirees' Best Interests First," Testimony before the U.S. Department of Labor, August 12, 2015, available at https://www.americanprogress.org/issues/economy/reports/2015/08/12/119299/the-fiduciary-rule-would-put-savers-and-retirees-best-interests-first/.

[2] Joe Valenti and Marcus Stanley, "Another day, another dollar for retirement advice rip-offs," *The Hill*, March 3, 2017, available at http://thehill.com/blogs/pundits-blog/finance/322251-another-day-another-dollar-for-retirement-advice-rip-offs.

[3] "An 18 month delay of the fiduciary rule will cost retirement savers $10.9 billion," Press release, September 13, 2017, available at http://www.epi.org/press/an-18-month-delay-of-the-fiduciary-rule-will-cost-retirement-savers-10-9-billion/.

[4] Some examples are documented in a September 5, 2017 letter from Senator Elizabeth Warren to Secretary Acosta, available at https://www.warren.senate.gov/files/documents/2017_09_05_Letter_to_Acosta_Fiduciary_Rule.pdf.

[5] Siegel & Gale, LLC and Gelb Consulting Group, Inc., "Results of Investor Focus Group Interviews About Proposed Brokerage Account Disclosures," Report to the Securities and Exchange Commission, March 10, 2005, available at https://www.sec.gov/rules/proposed/s72599/focusgrp031005.pdf; Angela A. Hung and others, "Investor and Industry Perspectives on Investment Advisers and Broker-Dealers," RAND Institute for Civil Justice, 2008, available at https://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf.

[6] Financial Engines, "In Whose Best Interest? (Part 2) A Financial Engines Survey on the Conflict of Interest Rule," April 2017, available at https://financialengines.com/docs/financial-engines-best-interest-report-2-041817.pdf.

[7] Ibid.