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September 24, 2015

By email: e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Conflict of Interest Rule
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Response to Conflicts of Interest Proposed Rule (RIN 1210-AB32)

Dear Sir or Madam:

I am writing regarding the U.S. Department of Labor's (DOL) proposed Conflicts of Interest Rule (Proposed Rule) and related Exemptions, which address conflicts of interest in financial advice on pension-related assets. I submitted a comment letter, dated July 20, 2015, in the first round of comments. In light of the other public comments, testimony at the August public hearings held by the DOL on the Proposed Rule, and legislative activity, I want to reiterate my support for the Proposed Rule and correct misleading representations made by some members of the financial services industry.

Industry Arguments

Nearly all of the opposition to the Proposed Rule comes from self-interested financial industry participants and the membership organizations that support their interests. With more than \$17 trillion of assets in accounts regulated by the DOL, including more than \$7.5 trillion in IRAs, members of that industry that rely on their ability to provide advice to investors in spite of their conflicts of interest have a great deal at stake. Their arguments can be summarized as follows:

1. The provision of conflicted advice does not negatively affect retirement savers. That argument is wrong.

Both the Council of Economic Advisors' February report and the DOL's Regulatory Impact Analysis show that conflicted advice costs retirement savers billions of dollars every year. Both of those reports are based on thorough analysis and rely on rigorous and independent academic research. Industry has not offered a single independent study or analysis to counter those reports. Instead, they offer only a variety of self-funded studies that use inapt comparisons.

2. Because the clear evidence shows that conflicted advice does impose excessive and unnecessary costs on retirement savers, the industry next argues that everyone agrees advisers should work in

the best interests of their clients, but that their proposals are superior to the DOL's proposed rules. This argument, too, is wrong.

None of the industry proposals would actually require advisors to act in investor's best interest. Some of the proposals ignore the difference between a fiduciary duty of care, which prohibits advisors from acting negligently, and the fiduciary duty of loyalty, which is very different and requires fiduciaries to eliminate or mitigate conflicts in order to ensure that they work in the best interest of their clients. The proposals also tend to undermine enforcement mechanisms that would ensure the Proposed Rules have teeth. Mandatory standards without effective enforcement mechanisms are, in fact, nothing more than recommendations.

3. Next industry argues that even if conflicted advice imposes unacceptable costs on retirement savers and the DOL's Proposed Rules would be required to address those costs, the Proposed Rules would cause all but the wealthiest savers to lose access to financial advice. Again, industry is wrong.

Some advisors, such as those who have earned the designation of Certified Financial Planner™, already voluntarily adhere to professional standards that include an obligation to provide advice that is in their clients' best interest. It has not been, and will not become under the DOL's Proposed Rules, impossible for them to earn a living while providing advice that meets that standard. And, in fact, advisers can continue to charge commissions and receive revenue sharing if that is how they desire to be paid. The only thing that changes for them is that the advice they give must be in their clients' best interest.

It is simply not credible for the financial services industry to argue that it will be unable to provide advice in the best interest of its clients and remain profitable. Advisers do it now. Advisers who rely on commissions and revenue sharing can continue to be paid in the same ways. To the extent that the industry must adapt to the Proposed Rules the approximately \$17 trillion in assets in retirement accounts provides a powerful incentive to do so.

4. When all their other arguments fail, the financial services industry argues that DOL should abrogate its obligation to protect retirement savers because the Securities Exchange Commission (SEC) is the proper entity to address conflicts of interest in investment advice. This argument also fails.

Having ignored efficiency arguments in the debate over whether conflicts of interest negatively affect retirement savers, in the need to have a best interest standard that has teeth, and in the ability of industry to provide advice in their clients' best interest, here industry finally pulls out an efficiency argument. But, as with all their other arguments, industry ignores the interests of retirement savers and what would be efficient for them. Industry's argument is that it would be inefficient for financial advisers to have to comply with a high standard (best interest) for their clients' retirement assets while only being held to a suitability standard for non-retirement assets.

First, nothing prevents all advisers from providing advice in the best interest of their clients' with respect to all of their clients' assets. Those advisers who commit to complying with a best interest standard already do just that. Second, the SEC only has authority to regulate financial advice given on securities. The DOL is the only entity that can regulate advice given on all types of investment products that might be used by retirement savers. Third, not only is the DOL the only entity that has the breadth of regulatory authority to address advice on all types of investment products, it is critical

to the mission of the DOL that it exercise its authority. If the DOL fails to finalize the Proposed Rules it will fail to protect interests of the millions of U.S. workers who will need to rely on their retirement savings.

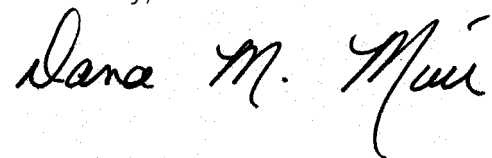
The Time to Move Forward is Now

It is time to recognize the financial services industry's campaign of misinformation and political pressure for what it is – a self-interested effort to retain a status quo that should have ended at least five years ago when the DOL first proposed rules to protect retirement savers from conflicts on interest in investment advice. In the intervening five years, the DOL has sought comment from the industry, the public and anyone else interested in this topic. The DOL revised its approach so that the current Proposed Rules are principles-based and flexible enough to permit advice providers to retain their compensation structures.

I urge the DOL to move forward with a final rule that will enable all retirement savers to rely on their financial advisers for advice that is truly in the best interest of those savers.

Thank you for your consideration of these comments.

Yours truly,

A handwritten signature in black ink that reads "Dana M. Muir". The signature is written in a cursive style with a large, stylized "M" and "Muir".

Dana M. Muir
Arthur F. Thurnau Professor of Business Law