

From: Marilyn Kincaid [mailto:mkkphil@aol.com]
Sent: Saturday, March 04, 2017 1:55 PM
To: EBSA.FiduciaryRuleExamination
Subject: RIN 1210-AB79

I am writing to provide input on the Definition of the Term “Fiduciary;” Conflict of Interest Rule – Retirement Investment Advice.

Any decision to rescind or delay this rule would take money specifically from hard-working people who are trying to do the right thing by saving for retirement. As detailed in the attached letter from Senator Warren, the kickbacks provided by financial institutions to financial advisors, and other conflicts of interest, total as much as \$17 billion per year. Critics of this rule say that fewer financial advisors would want to provide their services to retirees who cannot afford high fees without the enticements offered by the financial institutions. But this rule does not prevent the financial advisor or financial institutions from charging fees. It only prevents them from charging those fees deceptively by recommending products not in the best interest of their clients. And, quite frankly, if a financial advisor is unwilling to avoid even the appearance of conflicts of interest and kickbacks, by recommending products ONLY in the best interest of their customer, then the financial industry should do everything possible to discourage those advisors from providing any financial advice at all. One congressman remarked that this rule is akin to requiring financial customers to only choose “healthy” products and so it limits their “choices” to salad without the opportunity to choose cake. But food choices are not analogous to financial products. Since people eat every day, they are more familiar with the particulars and consequences of food choice. Most people do not review or digest financial products every day. While most consumers would recognize that a salad is a better choice than cake, most people cannot decipher the detailed differences between financial products. That is exactly why people go to financial advisors!! And to assume that customers, who are struggling to make ends meet while saving for retirement, would want to make the “choice” to buy products that would include kickbacks or other conflicts of interest to their financial advisor – at a higher price – is a completely outrageous assumption and divorced from reality. It is astounding that there would even be any question about whether financial advisors selling complex financial products should act in the best interest of their client and any effort to prevent implementation of this rule can only suggest to working people that they should not trust the financial industry. And that would discourage efforts to save for retirement while the government should be doing everything possible to encourage savings. As indicated in the attached letter from Senator Warren, most major financial institutions support this rule for that very reason and are ready to implement it.

C: Rep. Patrick Meehan
Sen. Pat Toomey
Sen. Bob Casey

ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

UNITED STATES SENATE
WASHINGTON, DC 20510 2105
P: 202 224 4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617 565 3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413 788 2690

www.warren.senate.gov

February 7, 2017

Edward Hugler
Acting Secretary of Labor
U.S. Department of Labor
200 Constitution Ave. N.W.
Washington, D.C. 20210

Dear Mr. Hugler:

As you know, in April of 2016 the Obama administration finalized a rule to protect consumers saving for their retirement from predatory financial adviser conflicts of interest that were costing hardworking Americans more than \$17 billion every year.¹ On Friday, President Trump issued a memorandum directing you to “examine the Fiduciary Duty Rule,” and “prepare an updated economic and legal analysis concerning [its] likely impact.” The memorandum also directs you to “publish for notice and comment a proposed rule rescinding or revising the Rule” should you determine that the rule is “inconsistent” with Administration priorities.²

Let’s be clear: a decision to rescind this rule or to delay the implementation of this rule in any way would rip billions of dollars in retirement savings from the pockets of hardworking Americans and put it straight into the hands of giant financial institutions.

I write today, as you begin your examination of this rule, to provide you with new information my office has received with regard to the financial sector’s readiness and willingness to comply with the Department of Labor fiduciary rule, which will, without intervention by your agency, become applicable on April 10, 2017. Last month, in the midst of uncertainty regarding whether the Trump Administration would take actions to delay or roll back this rule, I wrote to over thirty leading finance companies regarding their commitment to helping workers save for retirement, their support for the DOL fiduciary rule, and their preparedness to comply with the rule in April. Twenty-one of these companies answered my letter. Their overall message was clear: this rule is good for workers saving for retirement and companies are prepared to meet the compliance deadline.

In their responses, companies highlighted the urgency of the United States retirement crisis. As BlackRock noted, a “significant percentage of Americans do not have access to retirement plans, have not saved enough, or do not have the proper financial literacy and tools to

¹ The White House: President Barack Obama, Fact Sheet: Middle Class Economics: Strengthening Retirement Security by Cracking Down on Conflicts of Interest in Retirement Savings (April 6, 2016) (<https://obamawhitehouse.archives.gov/the-press-office/2016/04/06/fact-sheet-middle-class-economics-strengthening-retirement-security>)

² The White House: President Donald J. Trump, Presidential Memorandum on Fiduciary Duty Rule (Feb. 3, 2017)(<https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule>)

successfully navigate their retirement planning needs.” In fact, one-third of Americans on the verge of retirement have saved nothing and the next third have only managed to save one year’s worth of income.³ The “significant challenges to saving for retirement” that Prudential sees impacting American workers have put at risk their “ability to achieve the American dream of retiring comfortably after a long and fruitful career,” as J.P.Morgan said. There simply isn’t time to delay this important protection for Americans saving for their retirement any further.

In fact, the DOL fiduciary rule is not yet fully implemented and already it is reshaping the retirement industry to focus on clients’ interests. As J.P.Morgan noted, the DOL rule “may have accelerated the pace at which firms are making changes in respect of certain market developments, including a shift of assets from brokerage to advisory, the growth of self-directed and digital offerings, and a corresponding movement to towards lower fees.” For example, Commonwealth Financial Network has “lowered account minimums and costs in some of [their] managed accounts” and Symetra Life Insurance is developing a new annuity contract that “does not support the payment of commissions to distributors or sales agents.”

In addition to the twenty-one companies that responded to my letter, three additional companies, Betterment, XY Planning Network, and Personal Capital wrote to me last week to express their support for the rule and their opposition to any delay. Personal Capital expressed “unwavering support for the DOL rule” and according to the XY Planning Network, “the staged rollout of the Department of Labor’s applicability date to April of 2017, and subsequent full enforcement to January of 2018, were reasonable accommodations to the industry to give it time to adjust. And the Department’s willingness to issue new exemptions to accommodate segments of the industry... further illustrates how the rule is being made workable, and why a further delay is unnecessary.” Betterment encouraged companies and the President to “stand up to [those] financial companies, and their armies of lobbyists, who had renewed their efforts to delay or gut the fiduciary rule.”

These companies – and many others – know the basic truth that Charles Schwab recently shared with my office: regulations like the DOL’s fiduciary rule are a “component of maintaining the investing public’s trust in financial institutions.”

Many firms have welcomed the rule and the new client-focused landscape – after all, increased confidence in financial advisers brings more investors to the table.⁴ That’s why companies like Wells Fargo “supported the core best interest concepts underlying the Rule when it was originally proposed in 2010, when it was re-proposed in 2015, and when it was issued in final form last year,” and Commonwealth Financial Network “embraces its intent to rid the financial services industry of the ‘bad apples.’” This rule was meticulously developed over six years and heavily incorporated industry feedback.⁵ In their responses, key industry players expressed their support:

³ Time money, 1 in 3 Americans has saved \$0 for retirement (March 14, 2016) (<http://time.com/money/4258451/retirement-savings-survey/>)

⁴ WealthManagement, BlackRock CEO Likes Fiduciary Rule (April 18, 2016) (<http://www.wealthmanagement.com/blog/blackrock-ceo-likes-fiduciary-rule>)

⁵ New York Times, ‘Customers First’ to Become the Law in Retirement Investing (April 6, 2016) (https://www.nytimes.com/2016/04/07/your-money/new-rules-for-retirement-accounts-financial-advisers.html?_r=0)

- “Vanguard strongly believes that investors should receive investment advice that is in their best interest and that those who provide investment advice should be held to a fiduciary standard.” – *Vanguard*
- “We embrace our role as a fiduciary... and continually strive to evolve our investment products and solutions in response to our client needs [...and...] BlackRock is supportive of changes to the financial ecosystem that enhance confidence in markets and investing – an integral component to solving the retirement crisis.” – *BlackRock*
- “We support the intent of the rule, which is to protect the interests of investors by holding the industry to a high standard: acting in a client’s best interest when giving investment advice, and managing and disclosing any conflicts of interest.” – *Charles Schwab*
- “Lincoln financial Group supports further ensuring that clients’ best interests are served by increasing transparency of cost...” – *Lincoln Financial Group*
- “Putting our individual clients’ best interests first is a core value at TIAA and, accordingly, we support a best-interest standard.” – *TIAA*
- “Transamerica confirms its continued support of a standard that requires investment advice fiduciaries to act in the best interest of their clients.” – *Transamerica*
- “We believe that the core objective of the Rule has merit. Providing timely information and advice on retirement products is of paramount importance to Americans saving for retirement.” – *U.S. Bancorp*
- “We supported the core best interest concepts underlying the Rule when it was originally proposed in 2010, when it was re-proposed in 2015, and when it was issued in final form last year.” – *Wells Fargo*
- “Protecting individual investors is what the Rule is all about, and Commonwealth fully embraces its intent to rid the financial services industry of the ‘bad apples.’” – *Commonwealth Financial Network*

In addition to general support for the rule, companies have made what TIAA describes as “significant capital investments” in actively preparing for the rule’s implementation. This extensive preparation “includes, but is not limited to, updating and building new IT systems, revising and creating marketing and disclosure documents, and training employees to comply with the rule’s technical requirements.” According to the U.S. Chamber of Commerce, “Almost every company... has been 100 percent engaged in becoming compliant with the rule.”⁶

⁶ Morning Consult, Firms focusing on fiduciary rule compliance while crossing fingers on lawsuits (Aug. 18, 2016) (<https://morningconsult.com/2016/08/18/firms-focusing-fiduciary-rule-compliance-crossing-fingers-lawsuits/>)

Financial services companies responding to my request provided additional detail, and nearly every company I heard from affirmed that they will be ready to serve their customers under the rule's higher standard by April 10, 2017. Any delay or alteration to the rule would have unfair repercussions for the companies that have acted in good faith to implement this rule. A sampling of quotes affirming that industry has devoted time and resources to meeting the set deadline and will be ready to implement this rule in April includes:

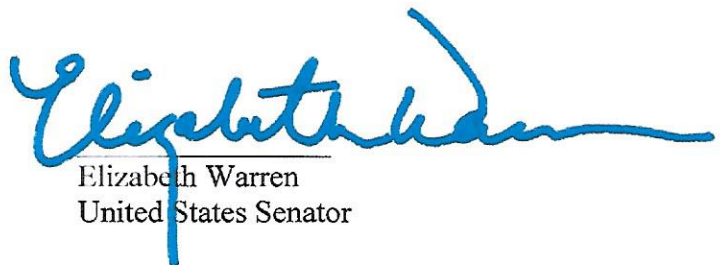
- “We have spent several months and invested considerable financial resources preparing to implement the new DOL rule. As of today, we are confident we would be ready to comply with the rule by the April 2017 deadline.” – *Charles Schwab Corporation*
- “... we are keenly focused on ensuring that we comply with all applicable laws, rules and regulations. We have been working diligently to identify and implement the necessary changes to address the Fiduciary Rule's wide-ranging requirements by the current applicability date.” – *BBVA Compass*
- “Capital One's investment business has been on a multi-year journey to reduce the number of commission-based products we sell to advised retirement clients because it aligns with our vision of serving clients by putting their interests first. It provides the added benefit of lowering costs for our clients.” – *Capital One*
- “... the various John Hancock business units impacted by the rule have been working diligently to be in compliance by the April, 10 2017 applicability date.” – *John Hancock*
- “We are committed successfully implementing the DOL rule in its current form by the April 2017 deadline.” – *Lincoln Financial Group*
- “We are prepared to comply with the Rule...” – *U.S. Bancorp*
- “Fidelity is fully prepared to comply with the rule if and when it becomes applicable.” – *Fidelity*
- “RBC has made preparations to comply with the DOL rule...” – *RBC*
- “Our organization has been focused on being in a position to comply with the rule by the applicability date of April 10, 2017, since the announcement of the final rule...” – *Principal Financial Group*
- “Since the rule was finalized last year, we have been actively working to meet our obligations under the rule.” – *Prudential Financial*
- “With the DOL rule now in final form, we have committed our resources to implement the processes, procedures and technology necessary for compliance.” – *LPL Financial*

- “Symetra is developing an annuity contract... at the request of several of our distributors whom we believe will find it very helpful in complying with the DOL rule.” – *Symetra Life Insurance*
- “TIAA is working hard to accommodate the DOL rule's more technical aspects in order to meet the April 10, 2017 applicability date. This extensive work includes, but is not limited to, updating and building new IT systems, revising and creating marketing and disclosure documents, and training employees to comply with the rule's technical requirements. We have made significant capital investments to this end....” – *TIAA*
- “Transamerica is preparing to comply with the DOL Rule as issued.” – *Transamerica*
- “...we are continuing the work needed to prepare for implementation of the Rule, as scheduled for April 2017.” – *Wells Fargo*

To be sure, not every financial company shares this full-steam-ahead support for the DOL rule, and some companies suggested that additional guidance and additional time for compliance would be beneficial. But the overwhelming voice of financial firms is clear: they support the goals of this rule; they have invested in this rule; they have planned for this rule; and they will be ready by the April deadline.

I could not agree more with BlackRock when they wrote: “We need immediate action, as the longer we wait the deeper and more difficult the problem becomes.” I hope you will consider these responses from a diverse group of major financial institutions impacted by this rule as you begin your examination and legal and economic analysis of the impacts of the rule. Frankly, delaying implementation of this rule would be a slap in the face to the companies that have invested, in good faith, for a deadline that has stood for the past year – and to the everyday worker deserving of the assurance that their retirement adviser is working in their best interest.

Sincerely,



Elizabeth Warren
United States Senator