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OFFICE OF THE STATE COMPTROLLER

March 16, 2017

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

RE: Definition of the Term "Fiduciary"; Conflict of Interest Rule-Retirement Investment Advice: Proposed Rule
RIN 1210-AB79

Dear Sir or Madam:

As the New York State Comptroller, I am the Trustee of the New York State Common Retirement Fund, the third largest defined benefit public pension system in the country, and the State's chief fiscal officer. I appreciate the opportunity to submit comments regarding the United States Department of Labor's (USDOL) proposal to delay the fiduciary rule's applicability date for 60 days, the questions raised in the February 3, 2017 "Presidential Memorandum on Fiduciary Duty Rule" (President's Memorandum), and on the fiduciary rule in general.

The final fiduciary rule, which clarified the definition of the term "fiduciary" and applied reasonable conflict of interest rules to those who provide retirement investment advice, became effective on June 7, 2016 and, to provide time for the industry to comply, had an original applicability date of April 8, 2017. **I oppose the proposal to delay the applicability date by 60 days to June 9, 2017.** I acknowledge the administrative concerns USDOL must now address in order to comply with the President's Memorandum, and the potential for regulatory disruption should the applicable date precede an agency determination to significantly revise or repeal the rule. It seems unlikely, however, that USDOL would determine that significant revision or repeal of the rule is warranted.

Finalization of the fiduciary rule followed several years of public outreach and diligence by USDOL, which thoroughly vetted issues such as those raised in the President's Memorandum. In its April 2016 regulatory impact analysis for the final rule, USDOL set forth its findings that advisory conflicts erode retirement savings and that, by extending fiduciary protections, the final rule would mitigate conflicts, support consumer choice, and deliver substantial gains for retirement investors and economic benefits that more than justify its cost. I would expect that in re-examining the rule as directed by the President's Memorandum USDOL will substantiate, again, those same findings.

A decision to delay implementation of the fiduciary rule would deprive millions of Americans and New Yorkers who are investing for their retirement the peace of mind that their advisors are providing them investment recommendations with their best interests at heart.

When USDOL sought comment on the rule in 2015, I commented by stating:

> "I applaud USDOL for carefully considering the comments received following its initial publication of a proposed fiduciary rule in 2010 and for crafting a common sense and balanced solution. The new proposed rule offers an enforceable best-interest standard that will protect plan sponsors, employees, beneficiaries, and the investment advisors who put the interests of their clients ahead of all other considerations. The USDOL proposed rule improves transparency and mitigates the harmful effects of conflicts of interest. In particular, requiring better disclosure of fees that can siphon away retirement savings will improve retirement security."

Those comments remain true. The need to establish higher standards for retirement advice comes at a critical time. Over the past few decades, there has been a major shift from defined benefit pension plans to defined contribution plans in the private sector in New York State and across the country. Less than half of the current workforce in New York State has access to or participates in an employment-based retirement plan. Further, for those who have a plan at work, the majority of 401(k) and IRA account balances are relatively modest and are unlikely to be sufficient to provide a secure retirement. Rising life expectancy and health care costs put more New Yorkers at risk of outliving their retirement savings and seeking government assistance. This issue is not unique to New York. Over 30 percent of Americans do not have any retirement savings and more than half of lower income Americans do not believe a comfortable retirement is attainable.

The retirement security of far too many working families, especially low and middle income Americans, is at serious risk. We need to encourage them to invest for their retirement and assure them that they are receiving unbiased and sound investment advice rendered in their best interest. Delaying the applicability date of the fiduciary rule will risk this confidence and could further erode the limited retirement assets many have been able to accumulate. The President's Memorandum and the White House National

Economic Council Director, Gary Cohn, have alluded to the possible burden the fiduciary rule may place on investment advisors and companies. I note that, as the Trustee of the Common Retirement Fund (CRF), I have a fiduciary duty to protect the retirement assets of over one million public employees, beneficiaries and retirees. To assist me in fulfilling my duties as a fiduciary, I have established a reporting and review system designed to prevent conflicts of interest or the appearance of conflicts of interest in CRF's investment decision-making process. Our investment and conflict of interest policies and practices help ensure that investment decisions are made for the sole benefit of CRF's participants and beneficiaries, and the retirement assets of our members, beneficiaries and retirees are protected. These policies and practices, similar to the Employee Retirement Income Security Act of 1974 (ERISA) standards and the fiduciary rule pending implementation, are not unduly burdensome.

Some critics suggest the fiduciary rule might keep some advisors from doing business with small investors. However, the rule is flexible in that it includes exemptions, provided certain conditions are met, which allow some advisers to continue to receive payments that could otherwise create prohibited conflicts of interest. USDOL also put forth a reasonable proposal for a streamlined exemption for recommendations involving high-quality low-fee investments that present less risk of abuse.

The departure of advisors who are not willing to meet the standards set by the fiduciary rule would be a positive result for workers who are struggling to save for their retirement. Further, the rule would level the playing field for those advisors who already put their customers' interests first. And too, the expected benefits to workers trying to save for retirement would far outweigh the rule's moderate costs to implement.

Since the rule was first proposed, USDOL has been thorough and thoughtful in its consideration of comments received. There is no need for further delays or examination. It is now time to close the loopholes that allow conflicts of interest and move the fiduciary rule forward. The fiduciary rule reflects a reasoned and reasonable approach. Middle-class workers and their beneficiaries cannot afford to wait any longer for help in protecting their retirement.

Americans and New Yorkers who have worked hard and played by the rules deserve a secure retirement. They deserve the assurance that those providing investment advice are doing so with their best interests at heart. They deserve to be able to entrust their hard-earned money with retirement investment advisors who play by the rules. Anything less would be a disservice to our middle-class families.

Sincerely,

Thomas P. DiNapoli
State Comptroller