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The Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Proposed Definition of Fiduciary Regulation
U.S. Department of Labor
200 Constitution Avenue, N.W. Room N-5655
Washington, DC 20210

Re: RIN 1210-AB79

Ladies and Gentlemen:

Ameriprise Financial appreciates the opportunity to provide comments on the Department of Labor's (the "Department") proposal to extend by 60 days the applicability dates of the regulation under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") that redefines the term "fiduciary" under section 3(21) of ERISA and section 4975(e) of the Internal Revenue Code of 1986, as amended and related prohibited transaction exemptions, including the Best Interest Contract Exemption and amended prohibited transaction exemptions.

As the leader in financial planning and a diversified financial services firm with nearly \$800 billion in assets under management and administration, we share the Department's goal of helping Americans achieve a secure retirement. Through our extensive wealth management and asset management capabilities, we advise, manage and protect the assets and income of more than 2 million individual, small business and institutional clients.

We have consistently supported regulatory efforts to develop a uniform best interest standard across our clients' entire investment portfolios, whether tax-qualified or otherwise. Each day, close to 10,000 Ameriprise advisors across the U.S. work with our clients to help them grow and protect their assets, while achieving their goals and a secure retirement. Our focus remains on ensuring our clients and advisors have access to choice among a broad suite of solutions, and how they choose to compensate their advisors, to help meet these critical client needs.

Ameriprise and our advisors work under the fiduciary standard for financial planning and investment advisory accounts overseen by the Securities and Exchange Commission (SEC). We are also overseen by the Financial Industry Regulatory Authority (FINRA) under the suitability standard for investment recommendations. We offer clients both advisory and commission-based solutions as either can be appropriate and in their best interests based on a client's unique circumstances. This is important because, according to an Oliver Wyman market study submitted to the Department on April 12, 2011, 95% of households saving for retirement have a



brokerage account and 98% of investor accounts containing \$25,000 in assets or less in their IRAs are in brokerage relationships.¹ This makes commission-based accounts an important means for middle class investors to save for retirement. Our clients are well served by the comprehensive financial advice and solutions we offer, as well as our robust compliance infrastructure and overall financial strength.

Throughout the regulatory process on this rule, we have consistently advocated for effective and appropriate regulation that preserves choice for American retirement savers in how they receive advice, the range of solutions to which they have access and how they compensate their advisors, while enhancing consumer protection across all of their investments.

The Department's latest proposal to extend the applicability date to June 9 is a welcome and much needed development. The regulation, which currently has an applicability date of April 10, 2017, introduces a new, third standard of care on retirement accounts that are already extensively regulated by the SEC and FINRA. As currently designed, the rule would reduce choice for investors and raise significant and complex issues for firms and advisors who serve both retirement savers and retirees. We support the Administration's decision to call for a thoughtful review of this rule and believe that the proposed delay of the imminent April applicability date is necessary to allow for that review without causing unnecessary confusion and burden on retirement investors.

In the absence of a delay, firms will need to move to implement before knowing whether the rule will be rescinded or revised, creating a confusing path for clients and advisors. The confusion this type of disruption would generate would unfairly undermine Americans' trust in financial institutions that were only meeting the requirements of a law that was later withdrawn.

Furthermore, without a delay, firms across the industry will incur additional and burdensome compliance costs as a result of having to implement the rule despite the uncertainty surrounding the final outcome. The robust financial advisor and employee training that is designed for the existing rule is based on one set of policies, procedures and processes to meet the requirements of the 2016 regulation. If that regulation, or a significant portion of it, is modified or never fully goes into effect, significant resources will be wasted. Regardless of the substantial amount that these training efforts cost, the time our financial advisors and employees could have spent helping clients achieve their financial goals rather than educating themselves and training on rules cannot be recouped.

The marketplace has already undergone a significant amount of disruption in response to this regulation as the various industry stakeholders have reorganized or in several circumstances, exited parts of the industry entirely. We do believe that, absent an extension of the applicability date, millions of affected advisers, retirement investors and other stakeholders will needlessly face confusing and harmful changes in the regulatory environment.

¹ Oliver Wyman, *Standard of Care Harmonization: Impact Assessment for SEC*, October 2010, 4, available at: <http://www.sec.gov/comments/4-606/4606-2824.pdf>

Oliver Wyman, *Assessment of the impact of the Department of Labor's proposed "fiduciary" definition rule on IRA consumers*, April 12, 2011, 2.

For instance, given the shadow this regulation has cast on annuities, we are concerned that financial advisors may be less likely to consider an annuity for a client out of fear of being second guessed, in hindsight, even when recommending the annuity is clearly in the best interest of the client, given that product's unique ability to guard against market downturns that might put a retirement nest egg in jeopardy. The proposed delay will allow advisors to continue to have the clarity and confidence necessary to provide the most prudent investment advice while awaiting the further guidance from the Department that was requested by the Presidential Memo.

The absence of a delay would be unnecessarily disruptive to our clients and the millions of retirement savers in the United States. A delay in the rule's implementation is prudent and will give the Department the appropriate time to consider the true impact of the proposed rule, to fully assess its impact on financial planning and the products and services that are so vital in helping Americans achieve and maintain a secure retirement.

Finally, deferring the rule's and applicable prohibited transaction exemptions' applicability dates will not delay the benefits to retirement investors assumed by the Department because those benefits are based on inaccurate or incomplete assumptions that do not take into account the value of advice provided by financial advisors. The Department itself estimated that investor loss due to a lack of professional assistance would have totaled \$114 billion in 2010 alone.² This number dwarfs the \$17 billion benefit posited by the Administration's Council of Economic Advisers or even the range estimated by the Department.³ Furthermore, analysis of actual investor data provided by the Investment Company Institute raises significant doubts related to the Department's economic underpinnings. In fact, this research shows that IRA owners pay below-average fees related to the mutual funds they hold.⁴

The value of the guidance provided to retirement savers is meaningful and has not been adequately considered by the Department to date; and we believe a 60-day delay provides time to better review the full impact of the rule. Financial advisors play a critical role in helping millions of Americans take the necessary steps to save for retirement and sustain a dignified lifestyle in retirement. In fact, recent research has shown:

- More people are being helped through financial advice and fees are going down.⁵
- Americans who receive advice have a minimum of 25% more assets than non-advised individuals.⁶

² Investment Advice – Participants and Beneficiaries, Final Rule, 76 Fed. Reg. 66151 (October 25, 2011).

³ White House Council of Economic Advisers, *The Effects of Conflicted Investment Advice on Retirement Savings*, February 2015, 2. U.S. Department of Labor, *Fiduciary Investment Advice Regulatory Impact Analysis*, April 14, 2015, 7, 8, 98, 102, 106.

⁴ Statement of the Investment Company Institute, *Hearing on "Restricting Access to Financial Advice: Evaluating the Cost and Consequences for Working Families and Retirees,"* June 17, 2015, 8.

⁵ Investment Company Institute, "Mutual Fund Expenses and Fees" in *2014 Investment Company Fact Book*, available at: http://www.icifactbook.org/fb_ch5.html

See also: Investment Company Institute, *ICI Research Perspective: Trends in the Expenses and Fees of Mutual Funds, 2013*, Vol.20, No. 2, May 2014, see generally.

⁶ Wyman, *The role of financial advisors in the US retirement market*, 6.

- In the case of individuals aged 35-54 years making less than \$100,000 per year in annual income, advised individuals had 51% more assets than those without a financial advisor.⁷
- Financial advisors are clearly helping Americans save more for retirement. A 2014 Consumer Survey by the LIMRA Secure Retirement Institute found that households that use a financial advisor are twice as likely as non-advised households to have \$100,000 or more in retirement savings, and three times as likely to have retirement savings greater than \$250,000.⁸
- Compared with individuals without a financial advisor, advised individuals own more diversified investment portfolios, take fewer premature cash distributions, and re-balance their portfolios with greater frequency to stay in line with their investment objectives and risk tolerance. All of these are important factors in maximizing retirement assets.⁹ These findings hold, even when controlling for income and age, indicating the value that advisors provide to a broad spectrum of American retirement savers.¹⁰

With these considerations in mind and the vital importance of retirement security at stake, we believe a delay of at least 60 days is necessary and appropriate, and we encourage you to move ahead with its formalization across all parts of the rule and exemptions.

We look forward to providing you with additional input and perspective as this process continues.

Sincerely,



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Ameriprise Financial Services, Inc.

⁷ Wyman, *The role of financial advisors in the US retirement market*, 2.

⁸ LIMRA Secure Retirement Institute, *Matters of Fact: Consumers, Advisors, and Retirement Decisions (and Results)*, May 2015, 3.

⁹ Wyman, *The role of financial advisors in the US retirement market*, 2.

¹⁰ Wyman, *The role of financial advisors in the US retirement market*, 17.