

March 15, 2017

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue NW, Room N-5665  
Washington, DC 20210  
Attn: Fiduciary Rule Examination, RIN 1210-AB79

Submitted via email to: [EBSA.FiduciaryRuleExamination@dol.gov](mailto:EBSA.FiduciaryRuleExamination@dol.gov); RIN 1210-AB79

**Re: Proposed Extension of Applicability Date of Definition of the Term “Fiduciary”; Conflict of Interest Rule – Retirement Investment Advice; Best Interest Contract Exemption (Prohibited Transaction Exemption 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016-02); Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 84-24, and 86-128.**

BlackRock, Inc. (together with its affiliates “**BlackRock**”) respectfully submits its comments to the Department of Labor (“**DoL**”) in support of its proposal to extend for 60 days the applicability date of the Definition of the Term “Fiduciary”; Conflict of Interest Rule – Retirement Investment Advice; Best Interest Contract Exemption (Prohibited Transaction Exemption 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016-02); Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 84-24, and 86-128 (collectively, the “**Fiduciary Rule**”). BlackRock is supportive of changes to the financial ecosystem that enhance confidence in markets and investing. We view this confidence as an integral component to solving the retirement crisis. However, the DoL needs adequate time to fully examine the Fiduciary Rule as directed by the Presidential Memorandum signed on February 3, 2017 the (“**Memorandum**”).

The Fiduciary Rule is long and complex with a wide range of consequences, intended and unintended, known and unknown. Furthermore, the specific considerations outlined in the Memorandum will likely require input from numerous stakeholders that could take months to gather and analyze. The Memorandum directs the DoL to propose revising or rescinding the rule if the DoL determines that the rule will harm investors or is otherwise inconsistent with the policies of the Administration. This directive leaves the status of the Fiduciary Rule uncertain. Given this lack of certainty, the current April 10, 2017 applicability date would impose unreasonably high costs and operational burdens on the financial services industry writ large. While the Proposal estimates that a delay *could* have a substantial financial impact on investors, those estimates are based on the existing regulatory impact analysis, the conclusions of which the Memorandum directs the DoL to re-examine. Failure to delay the April 10, 2017 applicability date will moreover cause confusion to individual investors whose products and services will likely change under the existing Fiduciary Rule, and who then may be subjected to a different regulatory regime, with different products and services made available, upon completion of the DoL’s examination.

One example of potentially wasteful efforts is the creation of new share classes that may not be used. Over the last year, BlackRock together with our partner firms, has dedicated an enormous amount of resources and effort toward compliance; however, the extraordinary complexity of the Fiduciary Rule requires the exercise of judgment and extensive coordination with our distribution partners. For example, in an effort to comply with the requirements of the Best Interest Contract Exemption (the “**BIC Exemption**”), many broker-dealers have requested that BlackRock provide a new share class for several BlackRock-managed mutual funds. There are significant costs and procedural requirements associated with launching a new share class (e.g., drafting and filing registration statements, obtaining SEC approval and onboarding funds onto partner platforms). A number of our distribution partners have communicated to us that this new share class may not be offered if the Fiduciary Rule is revised or rescinded. If the applicability date is not delayed soon, these significant costs will be incurred and resources will be expended regardless of whether the new share class is ever used.

Another example of potentially unnecessary and wasteful costs is the creation of massive amounts of new documentation. Section (c)(1) of the Fiduciary Rule contains an exception from fiduciary status attaching to arms’ length transactions with independent fiduciaries with financial expertise. This is an important exception for BlackRock as we engage in thousands of these transactions each year. However, the Fiduciary Rule requires us to satisfy a number of conditions to continue to sell our products and provide other services to sophisticated financial intermediaries.<sup>1</sup> The DoL expressed in the preamble to the Fiduciary Rule that we would have “the burden of demonstrating compliance with all applicable requirements”<sup>2</sup> of the exception. As such, we have undertaken considerable effort to augment our compliance processes, including documentation, recordkeeping and communication plans – all to continue engaging in our ordinary course business, which was never intended to be the target of the Fiduciary Rule.<sup>3</sup> It seems unreasonable to require BlackRock and other financial institutions to move forward and incur these additional costs and burdens, when the effort may ultimately be deemed unnecessary. If no delay is provided very soon, we may commence large scale communication efforts that may ultimately be pulled back or modified, which in addition to being wasteful, could cause confusion and negatively impact the investor experience.

Accordingly, BlackRock strongly supports a delay to the applicability date given the lack of certainty over the ultimate status of the Fiduciary Rule. This delay will provide the DoL time to properly assess potential modifications to simplify the Fiduciary Rule and/or reduce some of the unintended consequences. We urge the DoL to grant the delay as soon as possible.

Sincerely,

Barbara Novick  
Vice Chairman

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<sup>1</sup> BlackRock intends, in our comments regarding the questions raised by the Memorandum due on April 17th, to address in more detail the potential unintended consequences of the conditions of Section (c)(1) of the Fiduciary Rule.

<sup>2</sup> 81 Fed. Reg. at 20984.

<sup>3</sup> 81 Fed. Reg. at 20980. (“As explained in the proposal, the purpose of the proposed carve-out was to avoid imposing ERISA fiduciary obligations on sales pitches that are part of arm’s length transactions where neither side assumes that the counterparty to the plan is acting as an impartial or trusted adviser.”)