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March 17, 2017

Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Definition of the Term “Fiduciary” — Delay of Applicability Date, RIN 1210-AB79

Dear Officers:

Public Citizen submits this comment to oppose the proposed delay in implementation of the conflict of interest rule and related prohibited transaction exemptions finalized by the Department of Labor (DOL) last year.

DOL’s rule serves the important purpose of protecting retired Americans and Americans trying to save for retirement from investment advisors’ conflicts of interests. Currently, people saving for retirement may be steered into more expensive investments that generate larger fees for the financial advisors. Such conflicts of interest cost an estimated \$17 billion in investment losses from IRA assets each year.¹ A person who receives conflicted advice when rolling over a 401(k) into an IRA, but who takes withdrawals at the rate that would have been possible without the conflicted advice, will have his retirement savings run out five years earlier than it would have without the conflict.²

Delaying implementation of the rule will unnecessarily subject Americans who are trying to save for retirement to investment advice that is not in their best interests and to the corresponding investment losses. DOL itself estimates that a 60-day delay could lead to a reduction in estimated investment gains of \$147 million in the first year and \$890 million over 10 years for IRA and ERISA savers. In contrast, DOL projects cost savings to firms of \$42 million during those 60 days. Thus,

¹ Executive Office of the President of the United States, *The Effects of Conflicted Investment Advice on Retirement Savings* 2 (February 2015), available at <https://assets.documentcloud.org/documents/3467046/Cea-Coi-Report-Final.pdf> (last visited Mar. 10, 2017).

² *Id.* at 2.

DOL's own analysis predicts that the harm to retirement savers will far outweigh any industry savings from a delay.³

Delaying the implementation of the rule will have real effects on real people. As DOL explained in a court filing less than four months ago, “[t]his is not a case ‘when little if any harm would befall’” if the rule were stayed.⁴

[R]etirement investors are currently subject to substantial economic harm from the conflicts of interest in this market, and the Department concluded that those harms should not continue unabated. Suspending the April 10, 2017 applicability date—and thus the financial industry's preparation to comply with the rulemaking—would sow confusion in the market and potentially delay the needed reforms to the harm of investors and the public interest.⁵

The United States District Court for the District of Columbia agreed that a stay of the rule was unwarranted. “[T]he new rules were adopted to protect retirement investors from conflicted advice and potential losses to their retirement savings. Enjoining the rule would delay this protection. It would also interfere with the implementation of [the] regulations that were lawfully adopted after nearly six years of study, public comment, and consideration.”⁶

DOL crafted the final rule in reliance on extensive evidence, including thousands of comments from the full array of interested parties. Based on a thorough analysis of the rulemaking record, DOL concluded that “the Rule is necessary to safeguard the retirement savings of millions of American consumers.”⁷ No further study is needed, and no further delay is warranted. The rule should be implemented as provided, without delay, to protect American retirees from those who would threaten their hard-earned savings with conflicted investment advice.

Sincerely,

Lisa Gilbert
Vice President for Legislative Affairs
Public Citizen

³ 82 Fed Reg. 12319, 12320 (Mar. 2, 2017).

⁴ Defs.' Opp. to Pl.'s Motion for a Stay and Injunction Pending Appeal 9, *Nat'l Ass'n for Fixed Annuities v. Perez*, Civil Action No. 16-1035 (D.D.C., filed Nov. 21, 2016) (citations omitted).

⁵ *Id.* (internal citations omitted).

⁶ *Nat'l Ass'n for Fixed Annuities v. Perez*, ___ F. Supp. 3d ___, 2016 WL 6902113, at *4 (D.D.C. Nov. 23, 2016).

⁷ Def.' Opp. to Pl.'s Mot. for a P.I. and for Summ. Judg. amd Defs.' Cross-Mot. for Summ. Judg., *Nat'l Ass'n for Fixed Annuities*, Civil Action No. 16-1035 (filed July 8, 2016).