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Vice Chairman & CEO
March 17, 2017

Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Via Email to EBSA.FiduciaryRuleExamination@dol.gov

To the Department of Labor:

RE: **RIN 1210-AB79** DOL Conflict of Interest - Fiduciary Rule
Comments in Support of 60-Day Delay in Applicability Date of Fiduciary Rule,
Employee Benefits Security Administration, RIN 1210-AB79 (82 *Fed. Reg.*
12319, March 2, 2017) ("NPRM of March 2, 2017")

Americans for Annuity Protection strongly supports the U.S. Department of Labor proposal to delay the DOL Fiduciary Rule applicability date of the final rule titled "Definition of the Term 'Fiduciary;' Conflict of Interest Rule--Retirement Advice" that the Department published in the *Federal Register* of April 8, 2016.

AAP submits these comments to address only the proposed delay in the applicability date of the Fiduciary Rule. AAP intends to submit separately comments in response to the NPRM of March 2, 2017, that address the demerits of the Fiduciary Rule and the questions the President's memorandum raised about the Rule.

This request for delay is critical to provide the Department the necessary time to 1) effectively carry out the President's direction in his memorandum to the Secretary of Labor dated February 3, 2017, and 2) to avoid unnecessary and continued disruption to the annuity marketplace that still exists due to the uncertainty and confusion surrounding the proper interpretation and application of the requirements placed on annuities.

Annuity producers and advisors, independent marketing organizations and insurance companies have been working painstakingly and without pause to understand, interpret and implement the conflicting compliance and disclosure requirements that exist between the 84-24 and Best Interest Contract exemptions which, as you know, apply separately and disparately to fixed rate annuities, fixed indexed annuities and variable annuities.

Unfortunately, the requests for further clarification and guidance for the independent insurance channel has not been forthcoming from the Department since the initial FAQ published by the Department last October. More recent FAQs were published; however, they were directed mostly to other interested parties and not this unique service channel representing approximately two thirds of the IRA annuity marketplace. Without additional guidance, the industry is forced to guess at compliance and disclosure

Americans for Annuity Protection advocates for consumers' rights to an effectively regulated annuity marketplace fostering financial independence through guaranteed income

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requirements creating an environment that will not be standardized or uniform adding more confusion for consumers and disarray in the IRA marketplace. This confusion will be met with delay and postponement of saving decisions and activities. With today's crisis in retirement preparedness, delaying savings and retirement decisions does not move the ball forward for Americans; nor does it "empower Americans to make their own financial decisions," a goal highlighted by the President.

Previous Flawed Analysis

The President's directive will allow the Department to conduct statistically sound and quantitative research that effectively evaluates the savings impact this rule creates for annuity consumers. The delay is essential to dependably and thoroughly complete the analysis.

The Department commented in its original release of the proposed Rule that the "research has shown that disclaimers are ineffective in alerting retail investors to the potential costs imposed by conflicts of interest," yet the Department has constructed a Rule that does just that. The Rule as written adds dozens of pages of disclaimers and disclosures for consumers to review in addition to the ones imposed by state insurance regulation. Pouring over page after page of legal documents drafted and constructed to best protect the industry does not help the consumer.

Furthermore, the Department publicly admitted its flaws regarding the Department's view of supposed misbehavior by insurance agents and acknowledged that "direct empirical evidence about the frequency of such misbehavior is limited."

Lastly, the Department's selective use of "research" regarding fixed indexed annuities to support its treatment under the Rule is highly questionable. The Department limited its references regarding research to two "alerts" that were written by regulators and regulating entities competing directly with the fixed indexed annuity marketplace and "various" media reports no doubt written by entities whose advertising is supported by annuity competitors. This reliance on cherry-picked information is a significant conflict of interest by a government entity charged with providing equal treatment to all Americans.

These obvious flaws and biases in the analysis methodology and conclusions is support enough for more improved analysis the President is requesting.

The Presidential Order

The fact that recent court decisions may have allowed that the Department's analysis met the minimal requirements of the Administrative Procedures Act is irrelevant to the consideration of a delay. The Department of Labor must carry out the directive the President issued in exercising "the executive Power" vested in him by the Constitution and in carrying out the duty to "take Care that the Laws be faithfully executed" assigned to him by the Constitution.

As the memorandum notes the Department is charged to determine if the Rule "may adversely affect the

ability of Americans to gain access to retirement information and financial advice; has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice; and, is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services.

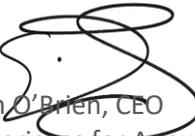
A Delay is Warranted

As a practical matter, the Department of Labor will need a significant amount of time and at least through the June 9, 2017, date it proposes, to conduct the review the President directed and determine upon the issuance of a notice of proposed rulemaking to revoke or modify the Fiduciary Rule. The work the Department of Labor undertakes in performing the review between now and June 9, 2017, will aid the Department, should it seek to revoke or modify the Fiduciary Rule, to meet its duty to "examine the relevant data and articulate a satisfactory explanation for its action."

Absent a delay of the applicability date of the Fiduciary Rule, the financial services industry must comply with the Fiduciary Rule by April 10, 2017. Given the Department of Labor review of the Rule directed by the Presidential memorandum of February 3, 2017 there is a substantial possibility that the Department will determine that it needs to revoke or modify the Rule, which would necessitate another round of compliance activity by the insurance industry either to unwind its previous compliance process, or to revise it to meet the modified requirements of yet another version of a Fiduciary Rule. This undo-redo process does not help Americans save for retirement.

For the reasons set forth above, Americans for Annuity Protection urges the U.S. Department of Labor to publish in the Federal Register a notice of a delay, of not less than sixty days, of the applicability date of the Fiduciary Rule. Thank you for the opportunity to comment on the Department's proposal to delay the applicability date of the Fiduciary Rule.

Sincerely,


Kim O'Brien, CEO
Americans for Annuity Protection