TheStandard®

April 14, 2017

Mailed Electronically: e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Fiduciary Rule Examination, Room N-5655
US Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Comments Addressing the Examination described in Presidential Memorandum Regarding the Department of Labor's Conflict of Interest (Fiduciary) Rule (RIN 1210-AB79)

Greetings:

Standard Insurance Company offers comments addressing the questions set forth in the February 3, 2017 Presidential Memorandum directing the Secretary of Labor to examine whether the final fiduciary regulation (the "Rule") may adversely affect the ability of Americans to gain access to retirement information and retirement advice, and to prepare an updated economic and legal analysis concerning the likely impact of the final Rule.

Standard Insurance Company is an Oregon-based insurance company with a national presence. Through its affiliates, The Standard provides a variety of financial services, including individual and group annuities, retirement plan services, and group and individual insurance products.

Standard firmly believes that individuals providing investment advice should be held to a strong standard of care, and in our experience the vast majority of investment advisers act in the best interests of their clients. However, the Rule as currently formulated will greatly increase compliance costs, limit access to products and advice, and increase litigation, thus ultimately leading to higher costs to investors, and a reduction in advice available to small investors.

Standard Insurance Company writes separately from our affiliate, Standard Retirement Services, Inc., to highlight the many harmful impacts of the Rule on individual annuities and the individual retirement products market. Standard Retirement Services, Inc.'s letter addresses the Rule's impact to qualified retirement plans. We join in their comments.

The Presidential Memorandum asks three questions:

> (1) "Whether the anticipated applicability of the Fiduciary Duty Rule has harmed or is likely to harm investors due to a reduction of American's access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice,"
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> (2) "Whether the anticipated applicability of the Fiduciary Duty Rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees" and
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> (3) "Whether the Fiduciary Duty Rule 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."

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We believe that, as discussed further below, an unbiased analysis of the answers to these questions is necessary and will support a decision by the Department to either rescind or revise the Rule.

I. A delay until December 31, 2017 of ALL of the regulations is imperative to prevent disruption in the markets and confusion among investors.

On April 7th, DOL published a 60-day extension of the Rule's applicability date, to June 9, 2017. At the same time, they also extended to January 1, 2018 all aspects of the Best Interest Contract Exemption (the "BICE") and existing Prohibited Transaction Exemption ("PTE") 84-24 except for the Impartial Conduct Standards.

We would like to point out that the Presidential Memorandum directs the new Administration's Secretary of Labor to review the entire Rule, not simply the pieces the Department characterizes as at issue. As has been stressed to the Department in numerous submitted comments, the Rule significantly expands the current definition of fiduciary, sweeping in heretofore non-fiduciary activities such as more sophisticated investment education, educational seminars and pure sales conversations, and expands the Department's authority over IRAs. Therefore we strongly urge the Department to issue a delay of the entire Rule until the later of December 31, 2017 or the completion of the presidentially-ordered review by the new Secretary of Labor.

Additionally, the contemplated bifurcated approach presents significant technical compliance difficulties for independent agents. The Rule's Best Interest Standard speaks in terms of the advisor and his or her supervising financial institution. As the Department is aware, independent advisors are not affiliated with a supervising institution – this is one of the reasons for the Department's proposed Independent Marketing Organization (IMO) PTE. However, that PTE does not yet exist, nor as explained in Section II below and in our previous commentary to the Department, will it be of any practical utility for the vast majority of IMOs or the advisers they serve.[1] Therefore, even if acting in good faith in utilizing Impartial Conduct Standards, it is unclear whether an independent agent has a means to technically comply with the BICE, absent a supervising financial institution. A delay of the full Rule until December 31, 2017, would give the Department time to review the comments submitted with respect to the IMO PTE and to create a workable solution so that investors are not deprived of the valuable access to independent agents who often serve small investors and more rural markets.

Moreover, since under the Impartial Conduct Standards an agent will effectively become a fiduciary, many agents and insurers will feel it necessary to undertake changes to their business models and to document their compliance, regardless of the Department's delay of the recordkeeping aspects of the BICE and 84-24. This is the type of disruption that the Presidential Memo asked the Department to investigate, and according to the Department's own commentary, they will not have time to evaluate by June 9th.[2]

Nothing in the current delay provides the industry with a safe harbor on which to rely in the interim. Instead, this bifurcated approach will simply continue investor confusion by creating additional regulatory practices during this interim period, as well as continuing the compliance cost run-up while the new Secretary conducts his review. This bifurcated process will limit the Department's ability to give a full review of the entire Rule. If the industry is required, on June 9th, to comply with problematic portions of the Rule, these sections will be harder to revise or repeal if they are later found to run counter to the Presidential Memorandum. For all these reasons we urge the Department to issue a blanket delay of the entire regulatory package during the new Secretary's review.

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[1] Standard Insurance Company's Comments to the Department of Labor's Proposed Best Interest Contract Exemption for Insurance Intermediaries, 2-21-2017

[2] Final Rule, Extension of applicability date, Conflict of Interest Rule, Federal Register, April 7, 2017, Vol. 82, No. 88, page 16905.

II. The Rule will bring about a reduction of Americans' access to certain investment products and advice, resulting in significant and continuing harm investors.

Our next three points address the specific questions raised in the Presidential Memorandum.

Standard offers fixed and fixed indexed annuities, and we have witnessed firsthand the reduction in product offerings brought about by the Rule. Specifically, the distribution channel for annuities and particularly fixed indexed annuities faces severe challenges under the Rule as currently formulated.

Fixed annuities are the sole means available in the marketplace through which retirees can supplement Social Security and secure additional income guaranteed to last through one's lifetime. Additionally, fixed indexed annuities allow purchasers to hedge against inflation, but still maintain a guarantee of principal and interest. Indeed, the Department is currently examining ways to promote the use of guaranteed income products in qualified retirement plans.

Yet with no meaningful prior notification to interested parties, the final Rule removed fixed indexed annuities from the types of products able to utilize the comparatively uncomplicated compliance methodology set forth in PTE 84-24. Instead, the final Rule required fixed indexed annuity sales to fall under the vastly more complicated BICE. Had the industry been given an indication that the Department was considering removing fixed indexed annuities from the products eligible to utilize PTE 84-24, it would have submitted comments explaining their value, and explaining the robust regulatory and supervisory structure mandated by existing state insurance law. Instead the industry was effectively blind-sided by their last minute exclusion from PTE 84-24, and forced to create a completely new and additional compliance and pricing structure within 12 months.

It is clear that the industry's anticipation of the regulation has had a chilling impact on sales of annuities:

- According to the Insured Retirement Institute, 2016 sales of all annuities declined 7.6% from 2015, and 2016 sales of variable annuities, which under the Rule will fall under the complicated BICE regulations, fell 21.65% from 2015. Fourth quarter 2016 fixed indexed annuity sales declined 7% from third quarter 2016 sales.[3]

- For 2017, the LIMRA Secure Retirement Institute projects that total sales of US individual annuity sales will drop 10% to 15%, while sales of variable and indexed annuities will drop as much as 20% to 25%.[4]

Fixed indexed annuities remained the most popular form of annuity for 2016,[5] but as demonstrated by the general decline in annuity sales approaching the April 10th compliance deadline, the increased regulatory and compliance burden on agents, as well as the "shuttering" of the primary distribution channel for fixed indexed annuities (discussed further, below) has severely reduced the availability of this important retirement investment product.

[3] "IRI Issues Fourth-Quarter 2016 Annuity Sales Report" Insured Retirement Institute, 3-30-2017.

[4] "Bumpy Ride Predicted for Individual Annuity Sales in 2017" InsuranceNewsNet Magazine, April 2017, LIMRA Secure Retirement Institute.

[5] "IRI Issues Fourth-Quarter 2016 Annuity Sales Report" Insured Retirement Institute, 3-30-2017.

III. The Rule will result in disruptions to the distribution channel for fixed indexed annuities.

In our earlier comment letter to the Department regarding the proposed Best Interest Contract Exemption for Insurance Intermediaries, Standard detailed the compliance difficulties faced by IMOs under the Rule, the inadequate relief provided by the proposed IMO exemption, and the reduction this will bring about in the distribution channel for fixed indexed annuities.[6]

Briefly, IMO sales account for more than half of the current $60 billion fixed indexed annuity market.[7] Yet the Department did not include them in its definition of a supervising financial institution in the Rule, and further intends to require onerous conditions that very few IMOs will be able to meet in order to satisfy the IMO PTE exemption. The proposed PTE requires an IMO to have transacted sales of fixed annuity contracts averaging at least $1.5 billion in premium per fiscal year over its prior three fiscal years, and to have maintained the aggregate of at least 1% of average annual premium sales or specialized insurance or maintained the aggregate of at least 1% of average annual premium sales or specialized insurance or both.

The $1.5 billion premium threshold will severely limit the number of IMOs who will be able to utilize the proposed PTE. Of the approximately 350 IMOs nationwide, fewer than a dozen will meet that threshold.[8] Additionally, of the 22 IMOs that filed applications for financial institution status with the DOL, only seven are eligible to qualify for the Proposed PTE.[9] We also anticipate that as a practical matter the proposed IMO PTE will give larger IMOs the market power to eliminate a majority of the smaller IMOs, thus further contracting competition and the market channel for this important retirement product.[10] Lastly, this proposed regulation has no current timeframe for implementation, leaving this distribution channel in limbo. A delay of the full Rule until December 31, 2017 would give the Department more time to address the IMO issues and help investors retain access to an important source of retirement savings information and financial advice.

IV. The Rule will cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services.

The Presidential Memorandum asks whether the Rule is likely to cause an increase in litigation. In response to that question, we point to statements made by previous Assistant Secretary of Labor Phyllis Borzi in June, 2016. Ms. Borzi acknowledged that the "DOL does not have direct enforcement authority" over IRAs, so with respect to IRAs, "the consumer has to enforce the Rule through state contract actions"[11] – in other words, through private legal action. Clearly the answer to the President's question is "yes," and it is because the Department designed the Rule that way. While the Department had the opportunity to develop a clear and workable compliance safe harbor, instead it developed a complex compliance regime (the BICE) which is so complicated and devoid of objective, measurable standards that even the best efforts to comply likely will be challenged in court.

Defending lawsuits, even meritless ones, is expensive, adds to the cost of doing business, and will inevitably be passed along to consumers. In a recent study, Morningstar estimates up to $150 million in annual class action settlements will result from the Rule. Those figures do not include the cost of the litigation itself.[12] In the near term, numbers are likely to be higher due to the new body of vague, complex

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6 Standard Insurance Company's Comments to the Department of Labor's Proposed Best Interest Contract Exemption for Insurance Intermediaries, 2-21-2017.

7 "IMOs Call DOL Fiduciary Exclusion Unworkable" by Cyril Touhy, Insurancenewsnet.com, Jan. 19, 2017.

8 "IMOs to DOL: Fiduciary Rule class exemption sets too high a bar" by Warren S. Hersch, lifehealthpro.com, Jan 24, 2017.

9 "Super-IMOs Get 16-Months to Comply with DOL Rule for Exemption" by Cyril Tuohy, insurancenewsnet.com, Jan 24, 2017.

10 "FIA Distribution Could Turn into 'Monopoly'" by Cyril Tuohy, insurancenewsnet.com, Feb 10, 2017.

11 "Who will enforce the DOL Rule?" by Nick Thornton, benefitspro.com, Jun 1, 2016

12 "Morningstar expects up to $150 M in annual class-action settlements under fiduciary rule", by Nick Thornton, benefitspro.com, Mar 16, 2017.

and potentially meritless litigation. Additionally, as discussed in more detail in the letter submitted by our affiliate, Standard Retirement Services, Inc., the recent history of class action litigation brought against ERISA plans demonstrates a history of questionable suits brought by the plaintiff's bar. None of this serves the larger purpose of providing quality retirement investment products and advice to Americans, so a full delay of the Rule is necessary to give the Department time to perform an evaluation of the potential costs of litigation, as required by the Presidential Memo.

V. Additionally, the investment advice gap – the United Kingdom's experience.

The Presidential Memorandum asks the three specific questions above in order to examine whether the Rule may adversely affect the ability of Americans to gain access to retirement information and retirement advice. In addition to addressing the above questions, we bring to the Department's attention the experience of the United Kingdom in a somewhat similar regulatory endeavor in 2014 to 2015. While the UK's experience has been pointed out in commentary to the Department under the previous administration, we believe it bears noting again for the benefit of the Department under the new Administration.

The UK's Retail Distribution Review (RDR) sought, among other goals, to bring clarity to the presentation of financial services and to address perceived conflicts of interest brought about by advisor commissions. The RDR eliminated commissions in favor of flat fees. Unfortunately, a result of the change was a 20% reduction in the number of advisers from 2011 through 2014.[13] Another outcome was that the proportion of firms asking for a minimum balance of £100,000 increased from 13% of firms in 2013 to 32% in 2015.[14] A third unintended result was an "advice gap", particularly for lower income individuals and for those who cannot afford the flat fee for advice.[15] In 2016, after the RDR went into effect, the UK's Financial Conduct Authority estimated that two-thirds of retail financial products sold in Britain were purchased without the consumer having received professional advice, an increase from 40 percent in 2011.[16] In an attempt to address these concerns the UK's Financial Conduct Authority is considering further changes to their regulatory structure to address these issues.

We believe that the Rule in its current form is likely to have results similar to those in the UK, if for no other reason than the increased compliance costs advisers must absorb. Indeed, it appears this has already begun to happen in anticipation of the Rule. For example:

- Edward Jones appears to have determined it will only service investors able to maintain a $100,000 account balance.[17]
- JP Morgan Chase announced it would do away with commission-based accounts and move investors to a self-directed platform, although they have delayed that initiative pending the outcome of the new Secretary's review.[18]
- Barron's reports that their clients with IRAs will no longer be able to receive advice and will be moved to self-directed products.[19]

And yet, recent surveys indicate that investors value the services advisors provide. For example, the Insured Retirement Institute's annual survey of Baby Boomers found that 85% of those surveyed who

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[13] "Financial Advice Market Review – Final Report", the Financial Conduct Authority, March, 2016 page 18.

[14] Ibid, page 19

[15] Ibid, page 24

[16] "Abandoned financial consumers await review findings" by Caroline Binham, Naomi Rovnick & Clear Barrett, Financial Times, March 13, 2016.

[17] "Edward Jones Shakes Up Retirement Offerings Ahead of Final Regulation," by Michael Wursthorn, The Wall Street Journal, August 17, 2016.

[18] "JP Morgan Chase puts off plan to move some clients to self-directed platform" by Bloomberg News, investmentnews.com, April 12, 2017.

[19] "BofA, JPMorgan, and the Final Regulation: Will they or Won't They?" By Crystal Kim, Barron's, March 15, 2017.

work with a financial advisor believe they are better prepared for retirement because of that relationship, and more than 90% of those who work with financial professionals have retirement savings.[20] It would be unfortunate indeed if, through the execution of this Rule, an advice gap similar to the UK's were to develop in the United States to the detriment of lower income individuals who perhaps need retirement savings assistance the most.

VI. Conclusion – a new rulemaking effort.

We believe that an unbiased review of the regulations by the new Secretary will lead to a conclusion that under the directions provided by the President, the Department must either revise or rescind the entire Rule because the Rule is likely to reduce Americans' access to retirement savings offerings, products, information and advice, result in dislocations and disruptions within the retirement services industry adversely affecting investors, and increase litigation and prices. We urge the Department to undertake a fresh rulemaking effort that engages with financial advice consumers, the financial services industry and other regulators such as the SEC, FINRA, and state insurance regulators, to develop a regulation that focuses on investment advice, and not on investing education, or on what are clearly arms' length sales transactions. We also urge that following any such future rulemaking, the regulated community be given an adequate period of time, not less than two years, in which to update or develop any necessary procedures, practices or systems.

Thank you for the opportunity to provide comments. Please feel free to contact us with any questions.

Sincerely,

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[20] "Few Boomers Believe Savings will Last Through Retirement" by Rebecca Moore, planadviser, Map 3, 2017.