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 Retirement Services, Inc. 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 Retirement Services, Inc. is an Oregon-based retirement plan services provider with a national presence. Along with our affiliates, we provide a full service level-fee platform for employer-sponsored retirement plans that includes financial recordkeeping, plan administration, investment advice and management, and participant services and educational materials. We strongly believe that investment advisers should act in the best interest of their clients. In our experience, the vast majority of individuals providing investment advice to qualified plans and their participants do just that.

We write separately from our affiliate, Standard Insurance Company, whose letter addresses the issues raised in the Presidential Memorandum with respect to individual annuity products. We join in their comments, and offer the following additional comments regarding the complications, service limitations and increased costs the Rule will impose on employer-sponsored retirement plans, their service providers, and ultimately plan participants.

Briefly, 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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Standard's retirement plan recordkeeping platforms are offered only with a level-fee structure. Therefore we have been less impacted than many others in our industry. Nonetheless, the Rule as currently formulated has increased our and our adviser partner compliance costs, is leading to a reduction in participant investment education, is limiting products and services and will undoubtedly increase litigation. We believe that, as discussed further below, an unbiased analysis of the answers to these questions will support a decision by the Department under the new Secretary of Labor to either rescind or revise the Rule.

I. A delay 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.

As pointed out in our affiliate's letter, the Presidential Memorandum directs the new Administration's Secretary of Labor to review the entire Rule, not simply those sections the Department characterizes as at issue. The Rule significantly expands the current definition of fiduciary, sweeping in many heretofore non-fiduciary activities.

The contemplated bifurcated approach presents significant technical compliance difficulties for independent advisors who are plan design specialists, rather than investment specialists. As the Department is aware, in the qualified plan space, there are many advisers whose main practice has to do with advising their clients on plan design, not investments. Other than providing recommendations to their plan sponsor client regarding hiring an investment advisor to service their retirement plan (which is not considered investment advice under existing regulations, but is under the Rule), these advisers do not provide investment advice. Consequently, they often are not affiliated with a financial institution. However, under the Rule compliance with the BICE requires an adviser to have a supervising institution. Even if such advisers act in good faith in accordance with Impartial Conduct Standards, it is unclear whether an independent advisor can comply with the BICE absent a supervising financial institution. A delay of the entire Rule until at least December 31, 2017 would give the new Secretary time to fully review this and other issues and provide a solution for such individuals.

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

Standard Retirement Services offers a full service qualified plan recordkeeping platform. As noted above, we have long utilized a strictly level fee pricing structure on our recordkeeping platforms, so we have been less impacted than many in our industry. Nonetheless, we have experienced disruption in our distribution channels, and have witnessed many negative consequences of the Rule. We offer the following examples for the new Secretary's consideration:

- We have observed several advisory and broker-dealer firms reducing the number of recordkeeping platforms they will work with. We understand the reasoning is two-fold; first they wish to work with level-fee platforms, and second, fewer platforms will mean fewer arrangements to monitor and supervise. Obviously this will result in a disruption in the service provider space, fewer options for plan sponsors, reduced competition, and ultimately higher expense for plan sponsors. We have also observed several recordkeeping platforms limit the advisory and broker-dealer firms they will work with, with similar results.

- We have observed firms restricting the types of services and assistance their advisers may give to plan participants. For example, some firms are dropping in-person enrollment and participant meetings due to concerns they will be deemed to be providing investment advice rather than education. Another firm is ending access to call center employees in favor of simple web-based tools.

- We have observed pricing standardization in the market, as firms seek to demonstrate compliance with the BICE. Typically, these standardized pricing models are higher than previous pricing models, due no doubt to increased compliance costs and litigation concerns. Additionally many firms are increasing the minimum asset balance for plans they will service. This is largely to the detriment of small plan sponsors and their participants, as they will either face higher costs or forego a qualified plan altogether. Clearly this is an unintended and negative consequence of the Rule.

Surely, such a contraction in the services, products, and advice available to plan sponsors and participants cannot benefit retirement investors.

III. The Rule will cause an increase in litigation, which will increase the costs to plan sponsors and plan participants.

The Presidential Memorandum asks whether the Rule is likely to cause an increase in litigation. As noted by our affiliate, Standard Insurance Company, the Rule was designed to be enforced through litigation. Nothing in the regulations provides a retirement plan adviser a clear safe harbor on which to rely. The BICE deliberately contains a private right of action which will serve to increase litigation in the qualified plan space, since such plans present a ready-made group of investors and a simpler path to class actions for the plaintiff's bar.

We believe that this deliberate inclusion of a private right of action is directly contrary to the primary purposes of ERISA, to encourage employers to sponsor qualified plans for their employees and to provide for efficient dispute resolution. Already this year we have had Plan Sponsors contact us and ask about terminating their plans, due to increased liability and threats of litigation. Employer-sponsored retirement plans are still "voluntary" benefits. If the plans become too costly, from a fee or litigation perspective, fewer employers will offer these plans.

The Department is aware of the many examples of potentially abusive litigation already occurring in the qualified plan space. Only recently, virtually identical suits were filed against twelve large universities, all within one month. It seems unlikely that these 12 plans are so similar in design and administration that one can file virtually identical pleadings in all cases. Yet these institutions (and their service providers) will spend millions of dollars defending them.[1]

Today, plan sponsors and service providers are the targets of the plaintiff's bar no matter the type of fund(s) offered and how low the fees are. In the last year, according to Bloomberg BNA, 102 class action lawsuits were filed against employer-sponsored plans.[2] Among actions brought in the last several years are suits that allege harms from lack of passively managed funds,[3] over plans providing money market funds instead of stable value funds,[4] and over investment options that are known in the industry as low-cost, passively managed funds.[5]

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[1] "Outlook for 2017 retirement plan litigation" by Marcia S. Wagner, investmentnews.com January 3, 2017.

[2] "Top Plaintiffs Law Firms Filing ERISA Class Actions, Bloomberg BNA, November 7, 2016.

[3] *McDonald v. Edward D. Jones & Co.*, 2017 BL 23357, E.D. Mo., No. 4:16-cv-01346-RWS, 1/26/17

[4] *White v Chevron Corp*, 2016 BL 281396 N.D. Cal., No. 4:16-cv-00793-PJH, 8/29/16.

[5] *Bell v Anthem*, US District Court for the Southern District of Indiana 12/29/16

To our knowledge, to date very few of these suits have been successful. Many have settled, as plan sponsors and service providers decide it is ultimately less expensive to settle than to litigate. This drives up the cost of doing business, costs which are ultimately passed along to plans and their participants. Yet proportionally very little of any recovery in these suits is passed along to plan participants.

An additional concern with the BICE's private right of action is the very real possibility that increased litigation will lead to conflicting and unforeseen interpretations of the Rule when applied by judges and juries in different forums across the country. Surely this does not serve ERISA's intent to provide nationwide consistency with respect to retirement plans administration, and certainty that encourage employers to sponsor qualified plans.

In a recent study, Morningstar estimates up to $150 million in annual class action settlements will result from the Rule, which does not include the cost of the litigation itself.[6] In the near term, numbers are likely to be higher due to the new body of vague, complex and potentially meritless litigation. None of this serves the larger purpose of encouraging employers to sponsor retirement plans for their employees, and enabling the financial industry to provide quality retirement investment products and advice to Americans. We believe the deliberate encouragement of litigation against qualified retirement plans and their service providers, at a time when so many Americans face a retirement savings shortfall, is counterproductive and a bad public policy choice. Surely there is a better way to eliminate the very few advisers not acting in their clients' best interests than to subject the entire industry to unknown and increased litigation costs, which will inevitably be passed along to investors. Therefore we urge the new Secretary to issue a full delay of the Rule and thereafter to strongly consider revising or reissuing a rule that eliminates this harmful element.

IV. Conclusion – a new rulemaking effort.

As we have noted, we believe that an unbiased review of the regulations by the new Secretary will lead to the 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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6 "Morningstar expects up to $150 M in annual class-action settlements under fiduciary rule", by Nick Thornton, benefitspro.com, Mar 16, 2017.