

April 28, 2017

The Honorable Alexander Acosta
Secretary of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Mr. Secretary:

On behalf of the Investment Program Association (“IPA”) and its members, congratulations on your confirmation as Secretary of Labor. We look forward to working alongside you to ensure that Americans’ continue to have access to individualized financial advice and the portfolio diversifying investments that can help them meet long-term retirement savings goals.

Though temporarily delayed, the DOL’s Fiduciary Rule (“Fiduciary Rule”) has already made it harder for individuals to access the portfolio diversifying investments their portfolios require. The IPA believes an additional 180 days is the minimum time needed to complete this important review. Many of the Fiduciary Rule’s adverse impacts on everyday Americans have already been widely noted, including the sharply increased threat of litigation and the disincentive for advisors to recommend appropriate investments to investors with smaller portfolios. The IPA further believes that Congress should require the DOL and the Securities and Exchange Commission to act jointly to prescribe a harmonized best interest standard.

Despite industry input highlighting problems with the proposed rule, the final rule will create higher costs and increase risk to such an extent that many financial advisors may cease serving smaller clients, who often need financial advice the most. In response to this concern, President Trump issued an Executive Order requiring the DOL to examine whether the Fiduciary Rule will result in harm to investors due to an unintended reduction in Americans’ ability to use certain retirement savings products and services or disruptions within the retirement services industry.

As you appreciate, the final Fiduciary Rule forces most financial advisors to enter into a “Best Interest Contract” (BIC) with their clients in order to collect the commissions necessary to service the account. Because the DOL does not have enforcement authority over Individual Retirement Accounts (IRAs), it crafted the BIC to be enforced almost exclusively through class action litigation. Using private litigation as the primary enforcement mechanism, by requiring that fiduciaries execute a contract, including required contractual warranties, is an ineffective method of regulation. Allowing courts to interpret ERISA fiduciary standards of care is contrary to Congressional intent and is likely to result in inconsistent interpretation. The burden of such litigation will only further increase compliance costs and directly impact the cost of advice to retirement investors.

The risk of litigation is heightened by the fact that the final rule requires providers to offer a “reasonable” rate of commission, but does not define “reasonable.” This lack of definition has



already caused widespread confusion and uncertainty among financial advisors. The ambiguity also significantly increases litigation risk. Furthermore, any effort by the industry to collect information and data to determine what may constitute “reasonable compensation” could quickly run afoul of anti-trust regulations. This leaves the industry in an untenable position with no real guidance from the DOL on what will be considered “reasonable compensation,” and no real ability to develop an industry standard or even collect the data needed to create one. All of the ensuing confusion and uncertainty will surely result in increases in class action and private litigation, driving up costs and/or eliminating access to valuable investment options.

Mr. Secretary, in a comment letter filed earlier this month, the IPA urged the DOL to extend the effective date of the Fiduciary Duty rule to allow sufficient time to conduct the review required by The President. An additional 180 days is the minimum time needed to complete this important review.

We also believe that Congress should require the DOL and the Securities and Exchange Commission to act jointly to prescribe a harmonized best interest standard that will protect all investors across all types of investments, in a workable manner that safeguards access to quality financial advice.

Thank you for considering the IPA’s comments. We look forward to working alongside you to protect the American people and their access to sound financial advice.

Respectfully,



Anthony Chereso
President & CEO, Investment Program Association

About the Investment Program Association

The IPA supports individual investor access to a variety of asset classes with low correlation to the traded markets and historically available only to institutional investors, including: lifecycle real estate investment trusts (REITs), lifecycle business development companies (BDCs), interval funds, energy and equipment leasing programs and real estate private equity offerings. These portfolio diversifying investment (PDI) products have been held in the accounts of more than 3 million individual investors. They remain a critical component of an effectively balanced investment portfolio and serve an essential capital formation function for the U.S. economy. The mission of the IPA is to advocate for PDIs through education and public awareness.

