



July 19, 2017

VIA EMAIL

Employee Benefits Security Administration
Office of Exemptions
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210
EBSA.FiduciaryRuleExamination@dol.gov (Subject: RIN 1210-AB82)

RE: Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (RIN 1210-AB82)

Ladies and Gentlemen:

On July 6, 2017, the Department of Labor (“Department”) requested information on topics relating to the final *Definition of the Term “Fiduciary”; Conflict of Interest Rule – Retirement Investment Advice* and associated prohibited transaction exemptions (collectively, the “Fiduciary Regulation”), including whether the Department should delay application of certain conditions of those prohibited transaction exemptions (the “Additional Conditions”). On behalf of Western & Southern Financial Group, Inc. (“W&SFG”)¹ and its subsidiaries, we welcome this opportunity to express support for a delay in the application of the Additional Conditions. As discussed below, the Additional Conditions should be delayed to provide sufficient time for a thorough review of the Fiduciary Regulation in accordance with President Trump’s mandate; to allow appropriate time *after* the Fiduciary Regulation is reviewed and revised to implement any product changes, build/modify compliance structures, and make other changes to business processes; and to foster and permit coordination among applicable regulators.

1. Additional Time is Necessary to Review the Fiduciary Regulation

While W&SFG agrees that plan sponsors, plan participants, and IRA owners should receive investment advice that is in their best interest and will help them achieve lifetime financial security, we strongly believe the Fiduciary Regulation, and the Additional Conditions in particular, will have the unintended, negative result of reducing access to much needed investment advice, retirement benefit coverage, guaranteed lifetime income products, and investment education. While these unintended negative

¹ W&SFG is wholly-owned by Western & Southern Mutual Holding Company, a mutual insurance holding company. W&SFG is a Fortune 500, diversified, and customer-oriented family of companies, as well as a nationally recognized leader in consumer and business financial services. W&SFG and its subsidiaries manufacture a diverse array of products, including a variety of life insurance products, annuities, mutual funds, and private funds. In addition, our companies distribute these products to consumers through a variety of distribution models, including a captive sales force, intermediaries such as banks, broker-dealers, and insurance marketing organizations, and independent agents that are often small business owners.

consequences will affect all Americans investing for retirement, we believe the negative effects will be most acute for consumers with middle to small asset size retirement accounts and plans, a primary client base of W&SFG.

With those concerns in mind, we strongly support extending the applicability date with respect to the Additional Conditions in order for the Department to fully answer the important questions posed in President Trump's February 3, 2017 memorandum (the "President's Memorandum"),² including whether the Fiduciary Regulation "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" or "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."

As set forth in our April 17, 2017 comment letter, W&SFG strongly believes that the answer to each of those questions is yes. The Additional Conditions include the requirement of a contract under the Best Interest Contract Exemption ("BICE"), which will both increase litigation and result in reduced access to retirement savings offerings, as companies further reduce product offerings in order to meet BICE's stringent warranty requirements. Pursuant to the President's Memorandum, if the Department makes "an affirmative determination as to any of the considerations identified" or concludes "for any reason after appropriate review" that the Fiduciary Regulation is "inconsistent with the priority identified" in the President's Memorandum, the Department *must* revise or rescind the Fiduciary Regulation. While this mandated review and potential revision/rescission is occurring, the Additional Conditions should not be implemented.

2. Additional Time is Necessary to Implement The Additional Conditions After Revisions Are Made

Only after the Fiduciary Regulation has been thoroughly reviewed and revisions to it have been proposed and finalized (all in accordance with the President's Memorandum), will W&SFG and other similarly situated companies know with certainty what the applicable conditions on providing investment advice in a transaction-based context are. Then, we can appropriately design and implement compliance structures, make investments in information technology, and produce products and services that meet the revised requirements and the needs of retirement investors. As W&SFG has repeatedly stated,³ we and others in the industry need substantial time to implement compliance with the Fiduciary Regulation in a cost-effective and efficient manner.

² Presidential Memorandum on Fiduciary Duty Rule – Memorandum for the Secretary of Labor, 82 Fed. Reg. 9,675 (Feb. 7, 2017).

³ In our comment letter to the 2015 proposal, we requested three years for implementation. This year, we reiterated the need for appropriate time for implementation in two comment letters in response to the proposal to delay the Fiduciary Regulation and review it in accordance with the President's Memorandum.

Notably, a number of the Additional Conditions present particularly difficult and technical compliance challenges. For example, BICE requires that the “Financial Institution maintain[] an electronic copy of the Retirement Investor’s contract on its Web site that is accessible by the Retirement Investor.”⁴ The W&SFG entity acting as Financial Institution for our captive sales force does not have an existing customer web portal that it can leverage for this task and building one from scratch will take approximately 26 weeks and 7,000 IT work hours. With the uncertainty regarding the status of the Fiduciary Regulation, building this web portal at this time is counter-productive. If the examination required by the President’s Memorandum results in the rescission or revision of the Fiduciary Regulation and the applicability date for the Additional Conditions is *not* extended, advisers, retirement investors and companies like W&SFG could “face two major changes in the regulatory environment rather than one,” which “could unnecessarily disrupt the marketplace, producing frictional costs that are not offset by commensurate benefits.”⁵ This result should be avoided.

When the Fiduciary Regulation was proposed, W&SFG requested three years to build or update IT systems, train thousands of employees and agents, create new documentation, and develop and modify new and existing compliance programs and supervisory systems. While we have implemented applicable changes to appropriately comply with those parts of the Fiduciary Regulation that became effective on June 9th, we continue to automate, streamline and refine some of the necessary policies, procedures and processes. Implementation of the Additional Conditions on January 1, 2018 with the current uncertainty unnecessarily adds to effort and resources that ultimately could be spent to develop products and services to meet retirement investors’ needs. Accordingly, implementation of the Additional Conditions should be delayed until at least two years after any revisions to the Fiduciary Regulation are finalized.

3. Additional Time is Necessary for Regulatory Coordination

W&SFG operates in many different regulatory environments and contexts – our fixed annuities, fixed-indexed annuities, and life insurance products are sold in accordance with state insurance regulations. With respect to fixed annuities and fixed-indexed annuities, this generally means in compliance with the Suitability in Annuities Transactions Model Regulation (the “Annuity Model Regulation”), as adopted in applicable states. The mutual funds we manufacture are subject to federal securities laws and FINRA’s suitability rule applicable to broker-dealers and, in certain instances, federal securities laws applicable to registered investment advisors. Furthermore, our variable annuities are subject to federal securities laws and the Annuity Model Regulation. Notably both the SEC and the National Association of Insurance Commissioners have publicly indicated that they may revise their respective rules.⁶

⁴ Best Interest Contract Exemption, PTE 2016-01, II(a)(2).

⁵ 82 Fed. Reg. 12,320 (Mar. 2, 2017).

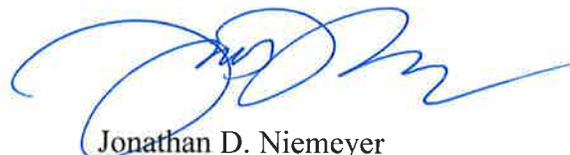
⁶ See, Chairman Jay Clayton, Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers (June 1, 2017), available at

Coordination among these varied regulators and their respective laws/regulations is of paramount importance. Of course a consistent standard of care for all investors and purchasers of annuities would benefit the industry that manufactures and sells these products by increased operational efficiency and simplified technological solutions. But consistency will also significantly benefit retirement investors. Without consistency retirement investors face the prospect of different account paperwork and disclosures for retirement and non-retirement accounts. The implementation of the Additional Conditions, which include further disclosure requirements as well as the best interest contract, will only compound this problem. Given the complex and evolving regulatory landscape, the Department and other regulators are unlikely to effectuate a coordinated approach with appropriate stakeholder input before January 1, 2018. Accordingly, a delay of the implementation of the Additional Conditions is warranted.

To reiterate, W&SFG supports a uniform, workable standard that ensures that consumers receive advice that is in their best interest and have access to products that meet their varied financial circumstances, objectives, needs and risk tolerances. But we strongly believe that implementing the Additional Conditions on January 1, 2018 does not move us closer to this goal. Rather, implementing the Additional Conditions at that time will only result in further upheaval to the marketplace, to the provision of investment advice, and to access to retirement products and services— all to the detriment of retirement investors.

Once again, W&SFG appreciates the opportunity to comment. If you have any questions regarding our comments or if we can be of any assistance in your consideration of the issues discussed above, please contact Sarah Sparks Herron at 513-357-4055 or sarah.herron@westernsouthernlife.com or me. Thank you.

Sincerely,



Jonathan D. Niemeyer
Senior Vice President, Chief Administrative
Officer and General Counsel