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By Email: EBSA.Fiduciary Rule Examination@dol.gov
Office of Exemption Determinations
Employee Benefits Security Administration
Attention: D-11933

U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

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

Ladies and Gentlemen:

Ameriprise Financial appreciates the opportunity to provide comments on the Department of Labor's (the "Department") Request for Information ("RFI) regarding the Definition of the Term "Fiduciary;" Best Interest Contract Exemption (the "BICE") and other related exemptions (collectively, the "Fiduciary Rule" or the "Rule").

We share our perspective as a leader in financial planning with nearly $800 billion in assets under management and administration. Our more than 2 million clients across the United States depend on our nearly 10,000 Ameriprise Financial advisors to help navigate the road to retirement, and we've earned their trust through a proven track-record of success and integrity. Under the personalized care of their Ameriprise advisors, our clients have saved and invested billions of dollars to enhance their long-term financial wellbeing.

We support a best interest standard that puts our clients' interests first. In fact, Ameriprise has long supported one uniform best interest standard across a client's entire portfolio. In practice, a nonqualified brokerage account holder, managed account client, IRA owner, small business owner, 401(k) plan participant and annuitant could potentially be the same client. We believe advice is holistic and clients view all their assets as available for planning – whether sending their children to college or saving for retirement. Throughout the regulatory process on this Rule, we have consistently advocated for effective and appropriate regulation that preserves choice for American retirement savers. We've advocated for choice in how clients receive advice, the range of solutions to which they have access and how they compensate their advisors, while enhancing consumer protection across all their investments.

Ameriprise has long worked under the fiduciary standard for financial planning and investment advisory accounts overseen by the Securities and Exchange Commission (SEC). We are also overseen by the Financial Industry Regulatory Authority (FINRA) under the suitability standard for investment recommendations. Our clients are well served not only by the comprehensive financial advice and solutions we offer, but by our robust compliance infrastructure and overall financial strength

Importantly, unlike the current Rule, any regulatory or legislative approach should facilitate a holistic regulatory framework, with input from the Department and the SEC, as well as FINRA and the State insurance regulators, to develop standards that would apply to the already state-regulated insurance market.

We support a two-year delay of the January 1, 2018 compliance date of the Rule to (i) give the Department of Labor the appropriate time to complete its review of the Rule and to (ii) allow Congress or the Executive Branch time to develop a more thoughtful, harmonized regulatory framework. The Rule has created new barriers to guidance that make it more difficult for retirement investors and has limited consumers' access to products and services that have long helped Americans achieve a secure retirement. We believe enhancing consumer protection while maintaining access and choice, are key goals that are essential to achieve together.

When the Rule was proposed, many financial services firms said that they would be required to cease offering commission-based products within retirement accounts. The Department largely dismissed these claims. There can no longer be any doubt that the Rule has led firms to eliminate commission-based accounts for retirement investors or to discontinue offering common investment products like mutual funds. By delaying the January 1, 2018 applicability date, the Department will send a strong signal to investors that they are taking this potential harm to retirement security seriously and that further harm must be avoided. Additional negative impacts resulting from the Rule can be further avoided by providing a robust delay that provides the opportunity for the Department to move forward with a measured approach which will turn the tide in favor of American retirement savers and retirees.

I. A Delay Would Significantly Benefit Millions of Retirement Savers as Firms Will Not Be Required to Expend Resources on Provisions That Are Subsequently Modified

The marketplace has already undergone a significant amount of disruption in response to this Rule as the various industry stakeholders have reorganized or, subsequently, in several circumstances, exited parts of the industry entirely. Recent market developments and data confirm that investors of modest means have lost access to advice and this unfortunate trend is likely to continue if the entire Rule goes into effect. Over the last several months, multiple brokerage firms have completed or announced plans to reduce or eliminate the use of brokerage accounts for retirement savings, which is especially harmful to investors with lower account balances. These investors rely upon commission-based products and services to achieve and maintain a secure retirement. Absent a delay of the January 1, 2018 applicability date, millions of affected advisers, retirement investors and other stakeholders will needlessly experience confusing and harmful changes in the regulatory environment.

In the absence of a delay, firms will continue to move to implement before knowing whether the Rule will be rescinded or revised, creating even more confusion for clients and advisors. This type of disruption unfairly undermines Americans' trust in financial institutions that act in good faith to comply with a law that may later be withdrawn or revised. Firms across the industry will incur additional and burdensome compliance costs because implementation will move forward, despite the uncertainty surrounding the outcome. Training internal staff, as well as the financial advisors, requires an understanding of the rules as well as time to provide material and support to conduct training on new processes and operational requirements. The existing Rule is based on one set of policies, procedures and processes to meet the requirements of the 2016 regulation. If that regulation, or a significant portion of it is modified or never fully goes into effect, significant resources will be wasted.

The extensive training necessary to educate advisors and employees for rules this complex comes with a substantial financial and opportunity cost. Firms will need financial advisors and employees to spend their time and focus on training for rules that may very well change, rather than spending time helping clients achieve their financial goals. This time and expense can be better invested in other important initiatives that will benefit our clients – initiatives that have been delayed or deprioritized to address the implementation issues that accompany such a significant change.

II. A Delay Will Help Ensure Retirement Savers Continue to Receive Education and Advice

Delaying the Rule's applicability date will not harm investors given that the assumptions that the Department used in designing the Rule were inaccurate or incomplete and did not consider the value of advice provided by financial advisors. The Department itself estimated that investor loss due to a lack of professional assistance would have totaled $114 billion in 2010 alone.[1] This number dwarfs the $17 billion benefit posited by the Administration's Council of Economic Advisers or even the range estimated by the Department.[2] Furthermore, analysis of actual investor data provided by the Investment Company Institute makes abundantly clear that the Department's economic analysis is flawed. Other research shows that IRA owners pay below-average fees related to the mutual funds they hold.[3]

The Department should take heed of the market shift that occurred in the United Kingdom (U.K.) and take greater care to prevent that negative impact from occurring in the United States. During the deliberations over the 2016 Rule, the U.K. launched a Financial Advice Market Review ("FAMR" or "Review") "considering concerns that the market for financial advice was not working well for all consumers."[4] The Review examined, among other things, whether the commission ban had created an "advice gap" for investors with smaller balances. The final report of this Review was published on March 24, 2016, and was mentioned in the Department's final RIA just a few weeks later, but was dismissed because the Department argued the Rule does not completely ban commissions.[5] We believe that this is a

[1] Investment Advice – Participants and Beneficiaries, Final Rule, 76 Fed. Reg. 66151 (October 25, 2011).

[2] White House Council of Economic Advisers, *The Effects of Conflicted Investment Advice on Retirement Savings,* February 2015, 2. U.S. Department of Labor, *Fiduciary Investment Advice Regulatory Impact Analysis,* April 14, 2015, 7, 8, 98, 102, 106.

[3] Statement of the Investment Company Institute, *Hearing on "Restricting Access to Financial Advice: Evaluating the Cost and Consequences for Working Families and Retirees,"* June 17, 2015, 8.

[4] Financial Conduct Authority, *Financial Advice Market Review – Final Report,* March 2016, 3, available at: https://www.fca.org.uk/publication/corporate/famr-final-report.pdf

[5] U.S. Dep't of Labor, *Regulating Advice Markets, Definition Of The Term "Fiduciary", Conflicts of Interest – Retirement Investment Advice, Regulatory Impact Analysis For Final Rule and Exemptions*, April 2016, 91, available at: https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2/conflict-of-interest-ria.pdf

distinction without a difference. A rule that explicitly bans commissions will not have a different economic outcome from a rule that makes offering commission-based products and services so risk-laden that firms decide to stop offering this choice altogether or limit their offering exclusively to high net worth investors.

Importantly, the recent regulatory action by the Department to delay several aspects of the best interest contract exemption ("BICE"), while falling short of a full delay, may lead some firms to reconsider the most drastic decisions to halt access of retirement investors and retirees to investment options like mutual funds in a brokerage account. In the course of its review, we believe the Department will find that market developments have occurred, and will continue to occur in the U.S., which repeat the unfortunate history of RDR's impact in the U.K. Additional highlights of that Review can be found in our comment letter filed on April 17, 2017[6]; in summary, the consistent theme that emerged from the Call for Input was that there was significant reduction in the number of clients who were able to access personal advice.[7]

The value of the guidance provided to retirement savers is meaningful and has not been adequately considered by the Department to date. This gap was identified by one of the Department's own consultants as part of the regulatory impact analysis.[8] Financial advisors play a critical role in helping millions of Americans take the necessary steps to save for retirement and sustain a dignified lifestyle in retirement. In fact, recent research has shown:

- More people are being helped through financial advice and fees are going down.[9]
- Americans who receive advice have a minimum of 25% more assets than non-advised individuals.[10]
- In the case of individuals aged 35-54 years making less than $100,000 per year in annual income, advised individuals had 51% more assets than those without a financial advisor.[11]
- Financial advisors are clearly helping Americans save more for retirement. A 2014 Consumer Survey by the LIMRA Secure Retirement Institute found that households that use a financial advisor are twice as likely as non-advised households to have $100,000 or more in retirement

[6] Ameriprise Financial Comment Letter regarding: Examination of the Definition of the Term "Fiduciary" Rule; Retirement Investment Advice, Best Interest Contract Exemption and other Related Proposals, RIN 1210-AB79, April 17, 2017, available at: https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB79/01379.pdf
[7] Ibid.
[8] Comments on a Review of a White House Report on Conflicted Investment Advice, August 21, 2015, Advanced Analytical Consulting Group, available at: https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/proposed-regulations/1210-AB32-2/comments-on-a-review-of-a-white-house-report-on-conflicted-investment-advice.pdf
[9] Investment Company Institute, "Mutual Fund Expenses and Fees" in *2014 Investment Company Fact Book,* available at: http://www.icifactbook.org/fb_ch5.html
See also: Investment Company Institute, *ICI Research Perspective: Trends in the Expenses and Fees of Mutual Funds, 2013,* Vol.20, No. 2, May 2014, see generally.
[10] Oliver Wyman, *The role of financial advisors in the US retirement market,* 6, available at: http://fsroundtable.org/wp-content/uploads/2015/07/The-role-of-financial-advisors-in-the-US-retirement-market-Oliver-Wyman.pdf
[11] Wyman, *The role of financial advisors in the US retirement market,* 2.

savings, and three times as likely to have retirement savings greater than $250,000.[12]

- Compared with individuals without a financial advisor, advised individuals own more diversified investment portfolios, take fewer premature cash distributions, and re-balance their portfolios with greater frequency to stay in line with their investment objectives and risk tolerance. All of these are important factors in maximizing retirement assets.[13] These findings hold, even when controlling for income and age, indicating the value that advisors provide to a broad spectrum of American retirement savers.[14]

III. The January 1, 2018 Effective Date Should Be Delayed to Allow the Department to Focus on Moving Forward with a Harmonized Standard of Care

The Department's efforts to reform the Rule and the exemptions is encouraging. The comments by Secretary Acosta indicate an appreciation for the existing regulatory framework that governs the standards that apply to a large segment of the firms that serve American retirement savers. This viewpoint is welcome and should serve the public and the capital markets well in the coming months. However, we believe that the efforts should be focused on a more harmonized approach to address the overly complicated BICE.

The RFI appears to anticipate that the Department is considering separate prohibited transaction exemptions that are limited to certain share classes or fee-based annuities. Drafting new class exemptions for these subsets of financial products is short-sighted and misdirects where the focus should lie. This piecemeal approach could result in exemptions that are unnecessarily narrow and do not allow for future innovation, and would not be the best use of the Department's resources. The Department should develop a harmonized standard that is designed to accommodate a variety of commission-based arrangements and that will be able to more easily accommodate diverse business models and future developments. The piecemeal approach harkens back to the already rejected, low-fee exemption proposal; the Department should not place itself in the position of "blessing" only certain delineated arrangements, and avoid the creation of "winners" and "losers" among financial products and services.

T shares, clean shares and fee-based annuities are not likely to be the best approaches in all circumstances. For example, mutual fund investors may already reduce their total commissions paid by choosing the appropriate share class from multiple options that best matches their anticipated purchase amounts and holding period. The new share classes would lack many of the features of existing mutual fund share classes, which can reduce (through rights of accumulation) or eliminate (through exchanges at NAV between funds within the same fund family) these same costs. T shares and clean shares are not widely available currently, and ultimately may not even be available to <u>all</u> retirement investors, especially those who invest through smaller intermediaries or for smaller funds. It is also important to note that this approach would not treat similarly situated products the same. For example, a clean share is intended to transact similar to ETFs, where clients will pay a transaction fee on both the purchase and sale of the investment.

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[12] LIMRA Secure Retirement Institute, *Matters of Fact: Consumers, Advisors, and Retirement Decisions (and Results)*, May 2015, 3.
[13] Wyman, *The role of financial advisors in the US retirement market*, 2.
[14] Wyman, *The role of financial advisors in the US retirement market*, 17.

Fee-based annuities are not a common solution for many retirement investors, and ultimately may not be in the best interest of an individual investor. We would simply note that the investor would be replacing a commission structure (one-time fee) for an ongoing annual advisory fee charge. In many cases, the investor will pay more in fees.

Instead of dealing on a case-by-case basis with specific share classes and compensation structures, the Department should propose a harmonized standard to allow for different business models and delay the January 1, 2018 implementation date to accommodate this change in focus. A harmonized standard would provide a better and more seamless client experience with a clearer understanding of their rights, allow advisors to serve clients better by eliminating duplicative and contradictory standards – and in general be better policymaking.

Conclusion

In closing, we believe a delay of two years would benefit millions of retirement savers in the United States. A delay in the Rule's implementation is prudent and will give the Department the appropriate time to consider the true impact of the Rule, to fully assess its impact on financial planning and the products and services that are so vital in helping Americans achieve and maintain a secure retirement.

We look forward to providing you with additional input and perspective as this process continues.

Sincerely,

Joseph E. Sweeney
President – Advice & Wealth Management, Products and Service Delivery
Ameriprise Financial Services, Inc.