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Filed Electronically

Office of Exemption Determinations
Employee Benefits Security Administration (Attn: D-11933)
U.S. Department of Labor
200 Constitution Avenue, N.W., Suite 400
Washington, D.C. 20210

Re: Request for Information Regarding the Fiduciary Rule and Related Prohibited Transaction Exemptions; RIN 1210-AB82

Ladies and Gentlemen:

Voya Financial, Inc.[1] is submitting this comment letter in response to the above-referenced Request for Information (the "RFI"),[2] in which the Department of Labor (the "Department") seeks feedback in connection with its examination of the final rule defining who is an investment advice "fiduciary" for purposes of the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code, as well as new and amended administrative class exemptions related thereto (together, the "Fiduciary Rule").

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1 Voya Financial, Inc. (NYSE: VOYA), helps Americans plan, invest and protect their savings — to get ready to retire better. Serving the financial needs of approximately 13.5 million individual and institutional customers in the United States, Voya is a Fortune 500 company with a vision is to be America's Retirement Company®. Its mission is to make a secure financial future possible — one person, one family, one institution at a time. Voya provides a comprehensive portfolio of asset accumulation, asset protection and asset distribution products and services, and it works directly with clients and through a broad group of financial intermediaries, independent producers, affiliated advisers and dedicated sales specialists. Certified as a "Great Place to Work" by the Great Place to Work® Institute, Voya is equally committed to conducting business in a way that is socially, environmentally, economically and ethically responsible and has been recognized as one of the 2017 World's Most Ethical Companies® by the Ethisphere Institute, and as one of the Top Green Companies in the U.S., by Newsweek magazine. For more information, visit voya.com.

2 Voya separately addressed Question 1 of the RFI in a comment letter dated July 20, 2017.

Voya supports a best interest standard for individualized investment advice provided to retirement savers. Any such standard must, however, improve outcomes for retirement savers. In its current form, the Fiduciary Rule does the opposite by limiting access to investment advice and reducing the scope of financial products that will be made available to retirement savers – making it harder, not easier, for Americans to prepare for retirement. The Fiduciary Rule also makes it riskier and more costly to provide investment advice to plan sponsors, thus limiting the advice plan sponsors get from advisors – advice they need to design their plans and maximize their employees' retirement savings. Voya respectfully submits the following suggestions for improving the Fiduciary Rule.[3]

I. Consumers are Harmed by a Vague, Privately Enforced Best Interest Standard

The aspect of the Fiduciary Rule that we believe will create the strongest disincentive to providing needed advice and products to retirement savers is the combination of a vague "best interest" standard with a potentially arbitrary and punitive enforcement regime. A person seeking to rely on the Best Interest Contract ("BIC") Exemption must provide advice that is in the customer's "best interest", but the Department has provided little guidance on how to apply that standard.[4] Rather, the Department is largely relying on the court system to define the contours of the standard through litigation, and, by prohibiting waivers of class actions in the BIC contract, invites enterprising private law firms to bring costly law suits against providers of retirement advice. We believe this approach to standard-setting – implementing a vague definition and inviting private litigation to resolve ambiguities that could have been resolved by the rule maker in the first instance – is not a good or effective use of the private litigation system.[5]

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[3] We are not submitting responses to all eighteen of the questions posed by the Department in the RFI. Included in this letter are our responses to those aspects of the RFI on which we are providing feedback.

[4] The Department has referred to ERISA jurisprudence as a source of guidance, but the BIC Exemption provides an entirely new context for providing advice – one that has not yet been the subject of any litigation, so this body of jurisprudence provides little practical comfort for providers of advice.

[5] The number of regulators with jurisdiction over retirement service providers also means that sufficient existing enforcement mechanisms exist. The SEC, FINRA and the state insurance and securities regulators all maintain active enforcement programs to ensure compliance with the laws they enforce. Most of these regulators also maintain a customer complaint bureau or mechanism for customers to submit complaints about firms or agents. Finally, FINRA maintains an arbitration program that provides a cost-effective forum for investors to seek compensation for potential inappropriate transactions. The BIC Exemption would add a layer of "private for-profit

We urge the Department to provide a clear standard before the balance of the rule takes effect, rather than continuing to implement a rule that, by design, will clarify itself only through costly conflict.[6] Faced with an unclear standard and the potential for expensive litigation, we believe providers of high-quality retirement advice will serve fewer customers and offer them fewer retirement products. We do not share the apparent assumption on which the Fiduciary Rule relies: that the same customers will continue to be served by the retirement industry, but with the benefit of improved advice and products. While Voya remains committed to serving all retirement investors, we are concerned that the rule will force many advisors to practice defensively, offering less advice, providing less education and assistance, and steering their customers towards products with the lowest possible cost, even when higher-cost products may better serve the customers' financial objectives.

Indeed, even now in the early stages of rule implementation, and before the BIC Exemption is in effect, we have already seen specific examples of retirement savers being harmed by the Fiduciary Rule. Among other examples, we have seen financial intermediaries that distribute or service our products terminate relationships with existing customers because of changes triggered by the Fiduciary Rule – leaving these customers "orphaned", without financial advice that they would still be receiving if the Fiduciary Rule had not been implemented. We believe terminations of other client relationships are forthcoming if the BIC Exemption is allowed to go into effect as currently written. In addition, the increased compliance costs that we and our industry peers are incurring in connection with the rule will, inevitably, be borne by end consumers – working against, not for, the Department's stated goal of lowering investment costs.

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regulators" – enterprising law firms who threaten expensive litigation to extract quick settlements, which ultimately, by way of higher costs and lower returns, come at the expense of the very consumers they purport to protect.

6 Moreover, we remain concerned that the Department's re-examination of the Fiduciary Rule is and will continue to be flawed because it will be unable to adequately respond to the President's directive to provide an updated economic and legal analysis regarding the impact of the Fiduciary Rule, including the likely increase in litigation. To date, the Department's updated analysis appears to consist of its statement that delaying enforcement of the Fiduciary Rule to January 1, 2018 "minimizes or eliminates the risk of litigation, including class-action litigation." But the President's directive to provide an updated analysis requires the Department to examine the cost of litigation beyond this narrow window selected by the Department, and the circularity of the Department's reasoning – that delay in enforcement will eliminate the risk of litigation, and there is no risk of litigation because the Department delayed enforcement – does not withstand scrutiny. As a consequence, the Department's stated position regarding the likely increase in litigation effectively precludes the Department from conducting the very analysis that the President's directive requires.

II. Product-by-Product Transaction Disclosures Are Unduly Burdensome And Don't Benefit Consumers

Current federal and state securities, and state insurance, laws and regulations already require extensive product cost and conflict of interest disclosure by financial services firms serving retirement customers. Existing disclosures include prospectuses, securities transaction confirmations, account opening documentation, Form ADV (and state equivalents) and state insurance contract requirements. As they stand today, these disclosures provide comprehensive, sometimes duplicative, and possibly overwhelming information to retirement customers. Section III(a) of the BIC Exemption ("Transaction Disclosures") adds a new layer to this existing patchwork, further taxing consumers' already stretched capacity to read and absorb information when they make important financial decisions. We expect that the majority of retirement customers will, at best, ignore the Transaction Disclosures and, at worst, become confused and annoyed by the ever-mounting volume of information sent to them. We therefore recommend that the Department either eliminate the Transaction Disclosures entirely or modify them to require an initial delivery at account inception and an annual update of any material changes.

In addition, because the Transaction Disclosures are required for each category of "investment product" recommended, with new recommendations triggering new disclosures, we anticipate customer confusion and information overload with respect to securities brokerage accounts in particular. Because brokerage accounts allow for a wide variety of "investment products," including mutual funds, equity securities, bonds, unit investment trusts, and annuities, we expect the rule as written will require firms to send their customers frequent and duplicative Transaction Disclosures. For example, if a retirement customer purchases a mutual fund in a brokerage account on January 1, the retirement customer will receive a Transaction Disclosure for mutual funds. If the same customer purchases an equity security in the same account on February 1, the customer will receive another Transaction Disclosure for equity securities. This pattern is then repeated for each subsequent new type of investment product recommended for that account. We do not share the Department's view that this volume of disclosure documents will enhance consumers' understanding of product cost or conflicts, and suggest a simplified, streamlined and less voluminous approach.

We recommend that the Transaction Disclosures be eliminated, or that the Department revise the BIC Exemption to allow the Transaction Disclosures to be satisfied through existing disclosures. If the Department nonetheless determines that the Transaction Disclosures serve a useful purpose to retirement customers, then we suggest revising the delivery requirement to allow one clear, streamlined and transparent disclosure document, at account inception, for all retirement account types (not product-by-product), with annual updates in the event of material changes, rather than new disclosures triggered as transactions are executed. The Form ADV delivery and update requirements under the Investment Advisers Act of 1940 may serve as a useful model for the Department.

III. Revisions to the Fiduciary Rule Should be Coordinated with the SEC, FINRA, and State Insurance and Securities Regulators

Over 100 agencies regulate Voya and its retirement industry peers. In addition to the Department, we are regulated by, among other agencies, the Securities and Exchange Commission ("SEC"), the Financial Industry Regulatory Authority, Inc. ("FINRA"), and insurance and securities regulators in more than 50 states and U.S. territories. Several of those regulators either have existing rules applicable to investment recommendations that overlap with the Fiduciary Rule or are considering new overlapping rules.

With so many agencies overseeing the retirement industry, coordination is essential. We do not advocate for a single, uniform standard applicable to every financial transaction, as there are long-standing and sound policy reasons for distinguishing among different types of transactions and classes of consumers. The rules should, however, work together as seamlessly as possible without creating unintended consequences or incentives; and this requires the various agencies who oversee financial products and advice to coordinate their rulemaking and enforcement activities. We therefore urge the Department to coordinate further modifications to the Fiduciary Rule with the agencies referred to above, and to not allow the balance of the Fiduciary Rule to become effective until such coordination is complete.

IV. A Disclosure-Based "Customer Bill of Rights" Would Better Achieve the Department's Objectives

In the RFI, the Department asks whether a simple up-front model disclosure that alerts a retirement investor to the fiduciary nature of the relationship, compensation structure, and potential sources of conflicts of interest, and invites the investor to obtain additional information from a designated source, would be an appropriate way to simplify the BIC Exemption. The Department further asks for submission of any model disclosures that could serve for this purpose.

We have previously brought this possibility to the Department's attention,[7] and appreciate the opportunity to reiterate our support for a simplified disclosure model – a **Customer's Bill of Rights** – that would in our view accomplish what should be a key objective of the BIC Exemption; placing in the hands of each customer the power to make an informed decision, and the freedom to choose the advice and products that are best suited for him or her. In our experience, customers are better protected when they receive simple and digestible information that empowers informed choice than by complex disclosures that are unlikely to be read or understood. The Customer's Bill of Rights, receipt of which could be acknowledged by the recipient, could set out key disclosures, terms and the potential conflicts that an adviser faces. While there are various models that could be effective, we attach as Exhibit A the suggested model that we previously brought to the Department's attention.

V. Health Savings Accounts Should Receive Consistent Treatment with Tax-Advantaged Retirement Savings Vehicles

In the RFI, the Department notes that some commenters have said that health savings accounts ("HSAs") merit a special exclusion or streamlined exemption because they tend to be invested in shorter-term deposit products to pay qualifying health expenses. We do not think this distinction justifies a special exclusion or streamlined exemption, as many other account types that are subject to the Fiduciary Rule may be invested in shorter-term deposit products. The RFI does not suggest extending any such exemption generally to investment recommendations

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[7] See our comment letter on the proposed Fiduciary Rule dated July 16, 2015.

covering short-term investments. There could be a rational basis for generally excluding investments in short-term instruments from the Fiduciary Rule's reach, but we do not believe the logic underlying any such exclusion would lead to carving out HSAs, or any other savings vehicle, to the exclusion of other vehicles.

Furthermore, HSAs are increasingly being used as long-term savings vehicles for health expenses in retirement, also a core function of traditional tax-advantaged retirement savings accounts such as 401(k) plans. With these savings vehicles acting as effective substitutes for each other – at least with respect to health expenses – we believe consumers and providers should be on equal footing with respect to their treatment under the Fiduciary Rule.

We appreciate the opportunity to provide our feedback on the RFI.

Sincerely,

Alain M. Karaoglan
Chief Operating Officer
Voya Financial

Exhibit A
Customer's Bill of Rights

- As your adviser, [I/we] generally receive compensation for providing services or advice to you.

- In some cases, [I/we] may receive more compensation depending on the product or investment you select, which results in a potential conflict of interest to [me/us]. In particular, these conflicts may include [describe conflict generally or refer to Web page].

- The products that [I/we] may recommend may include proprietary products of [name of financial institution].

- Set forth below is the basic compensation [I/we] will receive from different investment alternatives [I/we] may recommend:

Investment Product	Compensation to Adviser	Affiliate(s) Receiving Compensation

- You have the right to obtain additional information about the fees associated with any investment product [I/we] may recommend.

- You have the right to ask [me/us] for additional information about the compensation [I/we] or our affiliates will receive for various different investment alternatives you may purchase.

- If you are not comfortable with the advice [I/we] are giving or with the potential conflict(s) [I/we] face, you should not engage in the recommended transaction.

- You can and should comparison shop with different providers.