

September 13, 2017

Filed Electronically: [EBSA.FiduciaryRuleExamination@dol.gov](mailto:EBSA.FiduciaryRuleExamination@dol.gov)

Office of Exemption Determinations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue NW, Suite 400  
Washington, D.C. 20210  
Attention: D-11712, 11713, 11850



**Financial  
Engines**

1050 Enterprise Way  
3rd Floor  
Sunnyvale, CA 94089  
Office: 408.498.6000  
Fax: 408.498.6010

Re: Definition of the Term “Fiduciary” - Extension of Transition Period and  
Delay of Applicability Dates  
RIN 1210-ZA27

Dear Sir or Madam:

Financial Engines respectfully submits the following comments in response to the Department of Labor’s (the “Department”) proposed rule to extend for 18 months, from January 1, 2018 to July 1, 2019, the Transition Period for the Best Interest Contract (“BIC”) Exemption and the Principal Transactions Exemption, and certain amendments to Prohibited Transaction Exemption 84-24 of the Department’s regulation entitled *Definition of the Term “Fiduciary; Conflict of Interest Rule - Retirement Investment Advice* (the “Proposed Rule”).

Established in 1996, Financial Engines provides high-quality, objective investment advice in a fiduciary capacity to millions of defined contribution plan participants. Our experience demonstrates that it is possible to put the interests of investors first by providing personalized, unconflicted investment advice, even for investors with modest account balances, while still achieving solid business results.

Financial Engines thanks the Department for considering responses to its Request for Information (“RFI”) that was published in the Federal Register at 82 Fed. Reg. 31278 on July 6, 2017. In issuing the RFI, the Department furnished stakeholders an opportunity to provide input on the advisability of extending the Transition Period and to submit views that could serve as a basis for new exemptions or modifications to the Conflict of Interest Rule. As the Department continues to examine these important issues, we would like to offer our comments that the Proposed Rule would introduce additional uncertainty into the marketplace. Additionally, we would like to emphasize both the need for a strong Conflict of Interest Rule and the importance of an enforcement mechanism to ensure adequate protections for investors. Each of these items is discussed in more detail below.

## **Creation of Greater Uncertainty**

Financial Engines believes that extension of the Transition Period and delay of applicability dates for the Conflict of Interest Rule would inject additional uncertainty into the market, which could result in the imposition of costs on the industry and investors.

As America's largest independent registered investment adviser<sup>1</sup> with over \$151.8 billion in assets under management, we are proud to be in full compliance with the Conflict of Interest Rule and are encouraged that many others have announced their intention to comply by the original applicability date. Although some stakeholders have argued that compliance costs might overshadow the benefits of the Conflict of Interest Rule and limit choices for small investors, we note that many in the industry have already taken significant steps toward compliance – some even publicly announcing their intention to comply with the original applicability date.

Just as significantly, the Conflict of Interest Rule has spurred the development of new, low-cost, technology-based products and services that offer innovative options to small investors and make unconflicted advice cost effective for advisors. Consequently, an extension of the Transition Period and delay of the applicability dates could needlessly create uncertainty in the industry at a time when many market participants have already taken steps to comply with the rule, thus creating business costs that are ultimately passed on to investors.

## **Strong Conflict of Interest Rule**

Financial Engines continues to support a Conflict of Interest Rule that is workable for investment advisors, while at the same time assuring significant protections for investors.

There continues to be a strong and clear need for the investor protections given the changing retirement landscape and the shift toward defined contribution models. Potential conflicts of interest exist across retirement investment products and services, sometimes leading financial advisors to steer investors toward products with higher fees and commissions for the advisor but lower returns for the investor. As empirical research has shown, these conflicts of interest can dramatically impact investors' retirement savings over a 30-year career.<sup>2</sup>

Consequently, we agree with the underlying premise of the Conflict of Interest Rule that protections for investors involves a two-step approach. First, the definition of fiduciary investment advice needed to appropriately address the actual retirement investment advice that retirement investors rely on today. Second, the expanded



**Financial  
Engines**

1050 Enterprise Way  
3rd Floor  
Sunnyvale, CA 94089  
Office: 408.498.6000  
Fax: 408.498.6010

---

<sup>1</sup> For independence of methodology and ranking, see InvestmentNews RIA Data Center, <http://data.investmentnews.com/ria/>.

<sup>2</sup> Susan E. K. Christoffersen, What Do Consumers' Fund Flows Maximize? Evidence from Their Brokers' Incentives (2013).

scope of fiduciary investment advice needed to be balanced and enforced by a series of protections to ensure that retirement investment advice would be in the investor's best interest.

A robust Conflict of Interest Rule will help to promote the trend toward high-quality, low-cost, technology-based financial services and products that will make unconflicted advice increasingly cost-effective for advisors and accessible for investors of all means. Technology has democratized high-quality, objective advice, once only available to high net-worth investors. Our business model and market experience are an example of how technology can help investment advisors profitably offer high-quality, unconflicted advice to investors, provided both through web-based interactive experiences and through human advisors.

As such, Financial Engines continues to support a strong Conflict of Interest rule, which we believe is critical to the fair and efficient operation of our defined contribution retirement system.

### **Strong Enforcement Mechanisms**

We also continue to believe that the Conflict of Interest Rule must be enforceable in order to provide adequate protections for investors. Investors would not be well-served by a standard with limited means of enforcement. Robust enforcement mechanisms are a critical deterrent, ensuring careful implementation and compliance. Weakening these mechanisms would allow advisors with more leeway in the case of engaging in conflicted practices or where such practices were not adequately disclosed. Consequently, Financial Engines firmly supports ensuring that the Conflict of Interest Rule strikes the appropriate balance between administrative feasibility and strong, durable investor protections.

### **Conclusion**

Financial Engines seeks to ensure that all investors have access to unconflicted investment advice that promotes their interests and helps them to accomplish their financial goals. We appreciate the opportunity to comment on the Proposed Rule and welcome the opportunity to work with the Department and provide any further information that may be required. Please do not hesitate to contact us should you have any questions. For over 20 years, we have helped Americans with modest savings achieve greater financial security and would be happy to share our extensive experience with you.

Very truly yours,



Christopher Jones

Executive Vice President of Investment Management and Chief Investment Officer



**Financial  
Engines™**

1050 Enterprise Way  
3rd Floor  
Sunnyvale, CA 94089  
Office: 408.498.6000  
Fax: 408.498.6010