The COMMITTEE of ANNUITY INSURERS

1455 Pennsylvania Avenue NW, Suite 1200, Washington, DC 20004

March 16, 2017

FILED ELECTRONICALLY

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attention: Fiduciary Rule Examination (RIN 1210-AB79)
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room N-5655
Washington, DC 20210

Re: Fiduciary Rule Examination and Proposed 60-Day Delay

We are writing on behalf of the Committee of Annuity Insurers (the "Committee") in support of the Department of Labor's ("the Department's") proposed 60-day delay of the applicability date for the Fiduciary Rule, which is currently set to become applicable on April 10, 2017.[1] The Committee is a coalition of life insurance companies formed in 1981 to participate in the development of federal policy with respect to annuities. The Committee's 29 member companies represent more than 80% of the annuity business in the United States and are among the largest issuers of annuity contracts to IRAs and employer-sponsored retirement plans. A list of the Committee's member companies is attached.

The Department's proposed 60-day delay of the Fiduciary Rule's applicability date is necessary in light of the President's Fiduciary Duty Rule Memorandum calling upon the Secretary of Labor to review the Fiduciary Rule and the need to resolve significant gaps in the Fiduciary Rule before it becomes applicable. Moreover, the delay is necessary in order to ensure that firms affected by the Fiduciary Rule can continue to provide the services and products Americans need to prepare for and live a secure retirement while also fully complying with the Fiduciary Rule when, and if, it ultimately becomes applicable.

I. The President's Fiduciary Duty Rule Memorandum Warrants a Delay

On February 3, 2017, President Donald Trump issued a memorandum directing the Secretary of Labor to examine whether the Fiduciary Rule may adversely affect the ability of

[1] For purposes of this letter, the term "Fiduciary Rule" refers to 29 C.F.R. § 2510.3-21, as set to become applicable on April 10, 2017, and the new and amended class exemptions released by the Department on April 8, 2016, as corrected by 81 Fed. Reg. 44,773 (July 11, 2016).

Americans to gain access to retirement information and financial advice, and to prepare an updated economic and legal analysis concerning the likely impact of the Fiduciary Rule.[2] If the Secretary of Labor determines that the Fiduciary Rule adversely affects retirement investors or one of the President's other priorities, the President's Memorandum directs the Secretary of Labor to rescind or revise the Fiduciary Rule.

We support the President's call to further review the impacts of the Fiduciary Rule in order to determine whether the Fiduciary Rule, as drafted, will harm retirement investors or otherwise result in unintended or unwanted consequences. The issues surrounding the Fiduciary Rule have the potential to impact the retirement security of millions of American workers and retirees, and the Department needs to get this issue right from the very first day that the Fiduciary Rule becomes applicable. Given the magnitude and complexity of the Fiduciary Rule, we do not believe that it is possible to conduct the review called for by the President's Memorandum in just 66 days – the number of days between the release of the President's Memorandum and the Fiduciary Rule's current applicability date. Accordingly, we support the Department's proposed 60-day delay of the Fiduciary Rule's applicability date and encourage the Department to extend the applicability date for as long as necessary to complete the examination called for by the President. The current Fiduciary Rule is the product of multiple proposals and the expenditure of significant Department time and resources. Any revisions must be carefully considered and should not be rushed.

Beyond the need for a thorough review of the Fiduciary Rule, we also urge the Department to delay the Fiduciary Rule's applicability date in order to prevent affected firms, including the Committee's member companies and affiliates, from having to prepare for, implement, and operate in accordance with two successive and distinct regulatory regimes. As noted in the preamble to the Department's proposed delay, the President's Memorandum raises serious doubts as to whether the Fiduciary Rule will ever become applicable in its current form. In light of this uncertainty, we urge the Department to finalize a delay of the Fiduciary rule that will only require firms to implement a single "launch" of their Fiduciary Rule compliance operations. Without such a delay, affected firms may well incur duplicative and unnecessary costs, which in turn would adversely affect participant costs, while attempting to prepare for and implement the Fiduciary Rule, first as currently drafted, and then again as constructed under any future iteration.

We also wish to emphasize that it is critical that the proposed delay be finalized by April 10, 2017. The temporary enforcement relief provided by the Department on March 10, 2017 through Field Assistance Bulletin 2017-01 is greatly appreciated. However, it will not prevent private sector lawsuits based on advice to plans or plan participants, including advice to a plan participant regarding whether to take a distribution or roll over to another plan or IRA. The enforcement relief also does not extend to IRA or plan prohibited transaction excise taxes, which are enforced by the Internal Revenue Service, not the Department. As a practical matter, unless the delay is finalized by April 10, 2017, advice to plans, plan participants, and IRAs will be effectively subject to the Fiduciary Rule and sanctions for noncompliance.

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[2] Fiduciary Duty Rule Memorandum, 82 Fed. Reg. 9675 (Feb. 7, 2017) (the "President's Memorandum").

II. Significant Gaps in the Fiduciary Rule Warrant a Meaningful Delay

As the Committee explained in its February 21, 2017 comment letter regarding the proposed Best Interest Contract Exemption for Insurance Intermediaries ("the IMO BICE"), the Department's Fiduciary Rule created significant access and distribution gaps for fixed indexed annuities when it removed fixed indexed annuities from Prohibited Transaction Exemption ("PTE") 84-24 and simultaneously failed to create a feasible exemption for fixed indexed annuities sold through the independent agent distribution channel. The existing Best Interest Contract Exemption ("the existing BICE"), which is the sole exemption under which fixed indexed annuities can be sold, does not provide such an exemption.[3] In recognition of the gap created by the Department's changes, the Department proposed a new prohibited transaction class exemption for the sale of Fixed Annuity Contracts being sold through insurance intermediaries, like independent marketing organizations, field marketing organizations, and brokerage general agencies (collectively referred to herein as "IMOs"). The proposed IMO BICE was not released until January 19, 2017, allowed only a 30-day comment period, and has not yet been finalized.

Even if the IMO BICE were finalized today, few, if any, of the firms for whom the IMO BICE is intended will be able to design and implement the required policies and procedures by the Fiduciary Rule's April 10, 2017 applicability date. Thus, unless the Fiduciary Rule's applicability date is delayed – and delayed for considerably longer than 60 days – the sale of fixed indexed annuities to retirement investors through the independent agent channel will be effectively shut off, contradicting the Department's rationale for proposing the IMO BICE in the first place. As we explained in our February 21 comments, the proposed IMO BICE highlights the need for the Department to reconsider the treatment of fixed indexed annuities as part of the comprehensive review ordered by the President's Memorandum. Ideally, that review would lead to recommendations or a result that would eliminate the need for a specific IMO exemption altogether.

We want to make clear that there are also significant challenges for the distribution of variable annuities, which the Department should take adequate time for review. Even if it made any sense to treat variable annuities differently than fixed annuities – to which we continue to strongly object – the existing BICE has caused a major disruption of the distribution of variable

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[3] The existing BICE conditions relief upon a "Financial Institution" entering into a contract with the purchaser of an annuity and agreeing to accept certain new legal obligations outlined by the exemption. For purposes of the existing BICE, a Financial Institution can only be a bank, broker-dealer, insurance company, registered investment adviser, or any entity that is described as a Financial Institution in an individual exemption granted by the Department. IMOs are not typically organized as one of those enumerated entities and the Department has not yet granted any individual exemptions. This means that IMOs and other insurance intermediaries cannot serve as a Financial Institution for purposes of the existing BICE and are not eligible for any exemption that would permit the sale of fixed indexed annuities through the independent distribution channel, unless the insurance company or some third-party entity agrees to serve as a Financial Institution. Because the IMO is truly independent, the insurance company or a third-party entity lacks the supervisory authority and oversight appropriate for an entity serving as a Financial Institution under the BICE.

annuities. For example, the existing BICE, because of vague standards regarding "misalignment" of compensation incentives, has raised significant uncertainty regarding longstanding compensation practices. As a result, in order to comply with the existing BICE, firms affected by the Fiduciary Rule must make substantial changes to their variable annuity distribution models. Changes of this magnitude cannot properly be implemented within the timeframe set out by the Department. In this regard, a corresponding extension is also needed with respect to the end of the existing BICE's transition period, i.e., the period from April 10, 2017 through December 31, 2017 during which the existing BICE can be satisfied in a simpler manner. This will allow the time between the applicability date of the Fiduciary Rule and the applicability date of the full existing BICE requirements to be the same as currently provided. This is particularly necessary, as we note in the next section, because guidance on the compensation rules in the existing BICE was released October 26, 2016, giving firms only six months to respond.

III. A Delay is Needed in Light of Guidance Issued Well Into the Compliance Period

As we explained in our July 21, 2015 comment letter regarding the Department's 2015 Fiduciary Rule proposal, the Fiduciary Rule affects nearly every interaction an insurance company and its employees, agents, and brokers have with nearly every plan and IRA owner. Accordingly, in 2015, we urged the Department to provide a three-year implementation period between the Fiduciary Rule's final publication in the Federal Register and its eventual effective date. Nevertheless, since the Fiduciary Rule's release on April 6, 2016 and its publication in the Federal Register on April 8, 2016, Committee member companies and their affiliates have worked vigorously to reshape their businesses models, procedures, and IT systems in order to comply with the Fiduciary Rule. It is hard to understate the disruption that the Fiduciary Rule has caused to Committee members, who have been forced to work towards an unprecedentedly short timeline for a rule of such scope and complexity. Unfortunately, efforts to be ready for the April 10, 2017 applicability date were hampered because two sets of FAQ guidance were released after many critical compliance decisions had already been made.

The Department's release of informal Fiduciary Rule FAQs on October 26, 2016 and January 13, 2017, while no doubt intended to provide guidance on a number of important issues, has forced our members to reevaluate and redesign their compliance strategies more than halfway through the Fiduciary Rule's initial one-year implementation period. Those FAQs, which were not subject to notice and comment, added nearly 44 pages of guidance that must be taken into account by firms seeking to comply with the Fiduciary Rule. For example, the first set of FAQs contained new guidance on how an insurance company should interpret its obligations if it serves as a Financial Institution under the existing BICE.[4] The second set of FAQs contained guidance, which can be found nowhere in the actual Fiduciary Rule or preamble, regarding the sale of life insurance using assets that are not even held in a plan or IRA.[5] The

[4] Department of Labor, Conflict of Interest FAQs (Part I – Exemptions), FAQs 21-23 (Oct. 26, 2016).

[5] Department of Labor, Conflict of Interest FAQs (Part II – Rule), FAQ 4 (Jan. 13, 2017). This FAQ was contrary to how most Committee members had interpreted the Fiduciary Rule, meaning the Committee's member companies and other life insurance companies have less than three months to respond.

release of FAQs in January effectively condensed the timeline for firms to implement all applicable guidance on the Fiduciary rule from roughly one year to less than three months. That abbreviated timeline is wholly inadequate.

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For the foregoing reasons, the Committee believes the proposed delay is necessary and should be adopted.

If you have any questions, or if we can be of any assistance in your consideration of the issues summarized above, please do not hesitate to contact either of the undersigned at 202-347-2230.

Counsel to the Committee of Annuity Insurers

Joseph F. McKeever, III
Partner, Davis & Harman LLP
jfmckeever@davis-harman.com

Michael L. Hadley
Partner, Davis & Harman LLP
mlhadley@davis-harman.com

Attachment

THE Committee OF Annuity Insurers
www.annuity-insurers.org

AIG Life & Retirement, Los Angeles, CA
Allianz Life Insurance Company, Minneapolis, MN
Allstate Financial, Northbrook, IL
Ameriprise Financial, Minneapolis, MN
Athene Annuity & Life Company, Des Moines, IA
AXA Equitable Life Insurance Company, New York, NY
Fidelity Investments Life Insurance Company, Boston, MA
Genworth Financial, Richmond, VA
Global Atlantic Life and Annuity Companies, Southborough, MA
Great American Life Insurance Co., Cincinnati, OH
Guardian Insurance & Annuity Co., Inc., New York, NY
Jackson National Life Insurance Company, Lansing, MI
John Hancock Life Insurance Company, Boston, MA
Life Insurance Company of the Southwest, Dallas, TX
Lincoln Financial Group, Fort Wayne, IN
MassMutual Financial Group, Springfield, MA
Metropolitan Life Insurance Company, New York, NY
Nationwide Life Insurance Companies, Columbus, OH
New York Life Insurance Company, New York, NY
Northwestern Mutual Life Insurance Company, Milwaukee, WI
Ohio National Financial Services, Cincinnati, OH
Pacific Life Insurance Company, Newport Beach, CA
Protective Life Insurance Company, Birmingham, AL
Prudential Insurance Company of America, Newark, NJ
Symetra Financial, Bellevue, WA
The Transamerica companies, Cedar Rapids, IA
TIAA-CREF, New York, NY
USAA Life Insurance Company, San Antonio, TX
Voya Financial, Inc., Atlanta, GA

The Committee of Annuity Insurers was formed in 1981 to participate in the development of federal policies with respect to annuities. The member companies of the Committee represent more than 80% of the annuity business in the United States.