



TREASURY DEPARTMENT  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG, PA 17120

June 7, 2017

JOSEPH M. TORSELLA  
TREASURER

**Via Overnight Delivery**

The Honorable R. Alexander Acosta  
Secretary, U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, District of Columbia 20210

Re: **Conflict of Interest Rule – Retirement Investment Advice (RIN 1210-AB79)  
81 Fed. Reg. 21002 (April 8, 2016) (the “Fiduciary Rule” or “Rule”)**

Dear Secretary Acosta:

Thank you for your decision to implement the Fiduciary Rule on June 9th. As a bipartisan coalition of State Treasurers from across the country, we recognize the critical financial matters that face our nation and, in particular, we understand the many financial pitfalls that imperil the future security of workers, families, retirees and indeed every taxpayer. We want Americans to save for a better life for themselves and their families, and more personal responsibility and savings benefit everyone. That’s why we are gratified with your decision to implement the commonsense Fiduciary Rule established by the United States Department of Labor and why we write to urge you to remain committed to the Rule’s underlying investor protection requirements.

We come from a diverse coalition of states and perspectives, yet we share a common underlying core financial belief: individual investors must be protected. The Fiduciary Rule is an essential public investor protection.

As the public financial officers and the voice of financial leadership in our respective states, Treasurers are on the frontlines of America’s looming retirement savings crisis. We want people to save in the manner most appropriate for them, and we want those professionals that facilitate the appropriate saving and investing to be fairly compensated for their sound advice. The Fiduciary Rule is critical to ensure this happens. The financial markets can be treacherous to navigate and the array of options is vast. Anything less than the complete implementation of the Fiduciary Rule would be akin to sending individual investors into those rough seas without a lifejacket.

The retirement savings crisis is growing daily. There is a need for this Rule.

Thirty years ago, most individual retirement savings were provided through a traditional benefit plan, and the interests of individual investors were represented by professional advisors acting on the plan’s behalf. Dramatic increases in private defined contribution plans over the past

three decades have radically changed this environment, yet the individual investor lacks the safeguards and protections available to institutional investors.

#### State Treasurers Regard the Fiduciary Rule as an Essential Public Investor Protection

State Treasurers are the chief financial executives in their respective state administrations, possessing responsibilities similar to that of a bank or chief financial officer. Treasurers serve as custodians of each state's treasury and ensure the prudent oversight and safekeeping of entrusted public funds. As our states' chief financial officers, we oversee the administration of financial policies and programs, including college tuition savings assistance, investment accounts for disabled individuals, financial literacy programs and unclaimed property collection.

A significant responsibility of ours is the prudent management and, in many states, the investment of public funds. Funds not immediately used for the operating expenses of state governments are routinely placed in various public and private investment vehicles, often under contract with private investment managers. A central provision within each contract involving the investment of public funds is a statement detailing the applicable standard of care. Consistent with our responsibility to prudently manage public funds, a clear fiduciary standard is typically imposed upon the investment manager and included in the management agreement. Recognizing the absolute necessity to ensure that investment managers entrusted with public funds make investment decisions in the best interest of the taxpayers, the inclusion of a written fiduciary standard that requires the manager to act in the sole beneficial interest of the public fund is routinely demanded by State Treasurers.

Possessing the experience and responsibility of prudently investing billions of public dollars as State Treasurers, we are uniquely qualified to advocate for the Department's Fiduciary Rule as an essential public investor protection. Unfortunately, individual investors do not possess the financial size or scale to insist on the fiduciary investment standard when engaging a private investment manager. We can all support concepts of individual choice and freedom of contract without sacrificing our commitment to ensure that such choices and contractual relationships are informed and not predatory.

#### Dramatic Increase in Private Defined Contribution Plans Spark Need for Fiduciary Rule

Mandating that professional investment advisors and managers act in the best and exclusive interest of the investing client is neither a difficult concept nor a radical idea. To the contrary, the Fiduciary Rule appropriately reflects the current retirement investment environment. Thirty years ago, most individual retirement savings were provided through a traditional defined benefit plan; the interests of individual investors were represented by professional advisors acting on behalf of the retirement plan. That is no longer the case. According to the Department's Employee Benefits Security Administration, participation in private sector defined benefit plans dropped from 27.1

million in 1975 to 15.7 million in 2012. During the same period, the number of participants in private defined contribution plans increased from 11.2 to 75.4 million.<sup>1</sup> As a consequence, a large and growing number of individuals engage private financial advisors lacking safeguards and protections ordinarily available to institutional and public fund investors.

The Department's adoption of the Fiduciary Rule is premised upon an explicit recognition that the investment advice provided to individual investors is often conflicted, and that such conflicts are "widespread," and cause "serious harm" to plan and IRA investors.<sup>2</sup> The underlying record supports the Department's finding that "the impact of these conflicts of interest on retirement investment outcomes is large and widespread."<sup>3</sup> There has been no legal or factual development since the Department's adoption of the Rule and setting of its effective and implementation dates that would support a reevaluation or revision of the underlying need and purpose of the Rule.

The United States faces a retirement crisis. A recent National Institute on Retirement Security study asserts that 45% of working age households have no retirement savings. For those households that do have savings, the study estimates that the median retirement savings account balance is \$3,000.<sup>4</sup> An inadequate level of savings means heavier reliance on public assistance in the retirement years. As we explore and promote programs and policies, at the state level, that encourage early retirement savings in an effort to help individuals achieve basic retirement security, there will be a growing dependence on sound retirement guidance from professional advisors.

#### Strong Underlying Record Supports Unrevised Implementation

As you appropriately acknowledged, there is no record to support further delay in implementing the Fiduciary Rule. We note that that most private financial advisors have already begun the process of ensuring compliance with the Rule. For example, a recent survey of financial advisors, reported that 63% of respondents were planning little to no change in their compliance efforts despite the Department's delay of the Rule's implementation.<sup>5</sup> Underscoring this finding are the statements submitted to Sen. Elizabeth Warren from Charles Schwab Corporation, TIAA,

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<sup>1</sup> U.S. Department of Labor, Employee Benefits Security Administration, Private Pension Plan Bulletin (December 2014).

<sup>2</sup> Federal Register, Vol. 81, No. 68 at 20950 (April 8, 2016).

<sup>3</sup> *Id.* In fact, the Department found that "[a] careful review of the evidence, which consistently points to a substantial failure of the market for retirement advice, suggests that IRA holders receiving conflicted investment advice can expect their investments to underperform by an average of 50 to 100 basis points per year over the next 20 years. The underperformance associated with conflicts of interest – in the mutual funds segment alone – could cost IRA investors between \$96 billion and \$189 billion over the next 10 years and between \$202 billion and \$404 billion over the next 20 years."

<sup>4</sup> National Institute on Retirement Security, *The Retirement Savings Crisis: Is it worse than we think?* (June 2013).

<sup>5</sup> See, <https://www.fidelity.com/about-fidelity/institutional-investment-management/2016-q4-advisor-pulse>.

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U.S. Bancorp, BBVA Compass, LPL, Transamerica, Wells Fargo and Capital One, each indicating their compliance efforts to ensure readiness to implement the provisions of the Fiduciary Rule.<sup>6</sup>

Significantly, we join in your observation that legal efforts to challenge or delay implementation of the Rule have been unsuccessful.<sup>7</sup> On each occasion, the federal court noted the substantial administrative record in support of the Fiduciary Rule and the Department's consideration of the comments of opponents and concluded that the Department was well within its authority to adopt and immediately implement the protections contained within the Rule.<sup>8</sup> As such, the Department's final determination remains as accurate today as it was last year:

"In light of the Department's analysis, its careful consideration of the comments, and responsive revisions made to the 2015 Proposal, the Department stands by its analysis and conclusions that advisor conflicts are inflicting large, avoidable losses on retirement investors, that appropriate, strong reforms are necessary, and that compliance with this final rule and exemptions can be expected to deliver large net gains to retirement investors. The Department does not anticipate the substantial, long-term unintended consequences predicated in the negative comments." (Emphasis added).<sup>9</sup>

We urge the Department not to step back from its meticulous analysis and strongly stated conclusion. Though we acknowledge the temptation for any new administration to revisit and reconsider the decisions and policies of the prior administration, the Fiduciary Rule is different. It possesses broad bipartisan support among its advocates. It is the product of a substantial administrative record that supports its immediate implementation. Finally, there has been no new evidence, exigent circumstance or change in law identified that would justify or support any significant revision of the Rule.

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<sup>6</sup> Letter from United States Senator Elizabeth Warren to Acting Department of Labor Secretary Edward Hugler (February 7, 2017).

<sup>7</sup> *United States Chamber of Commerce v. Hugler*, 2017 U.S. Dist. LEXIS 17619 (N.D. Tex., Feb 8, 2017) (The Court upheld the Fiduciary Rule by granting the Department of Labor's motion for summary judgment and determined that the rule is "a reasonable interpretation under ERISA and is entitled to Chevron deference."); *Mkt Synergy Grp., Inc. v. United States Dep't of Labor, et al.*, 2017 U.S. Dist. LEXIS 23155 (D. Kan., Feb 17, 2017) (The Court determined that the Plaintiff failed to establish the requirements necessary for preliminary relief because "the Plaintiff could not establish irreparable harm, that the balance of equities tips in its favor, or that an injunction is in the public interest."); *Nat'l Ass'n for Fixed Annuities v. Perez*, 2016 U.S. Dist. LEXIS 162428 (D.D.C., Nov. 4, 2016) (The Court upheld the Fiduciary Rule and stated "the new rules were adopted to protect retirement investors from conflicted advice and potential losses to their retirement savings. Enjoining the rule would delay this protection.").

<sup>8</sup> *Id.*

<sup>9</sup> Federal Register, Vol. 81, No. 68 at 20952 (April 8, 2016).

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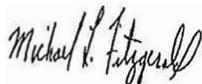
Conclusion

As State Treasurers, we are well acquainted with administrative rulemaking procedures that apply to government agencies, at the state and federal level. We understand the importance of a well-developed record, the necessity of adequate notice and due process, and the risk associated with a reversal of a final rule that is without evidentiary support. We are committed to protecting the financial interests of our constituents – in particular, ensuring that retirement planning and investment advice is not conflicted, and is provided in the sole interest of retirement savers. The Fiduciary Rule is not only a common-sense measure, but a necessary one to protect the public interest.

Thank you again for your stated commitment to implement the Fiduciary Rule. We look forward to standing with you to protect individual investors and to encourage personal savings with the protections afforded by the Fiduciary Rule.

Sincerely,

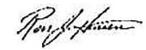
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