MEMO# 30674

April 18, 2017

ICI Submits Comment Letter Regarding Re-Examination of Fiduciary Rule

[30674]

April 18, 2017 TO: ICI Members SUBJECTS: Pension RE: ICI Submits Comment Letter Regarding Re-Examination of Fiduciary Rule

ICI has submitted a comment letter[1] to the Department of Labor (DOL) regarding the examination and analysis of the fiduciary rule required by a memorandum signed by the President on February 3, 2017 (President's Memorandum).[2] The President's Memorandum directs DOL to engage in a comprehensive review of the final rule and related exemptions and to determine whether the rule may adversely affect the ability of Americans to gain access to retirement information and financial advice. Following the re-examination and if certain criteria specified in the President's Memorandum are met, DOL is directed to rescind or revise the rule. On March 2nd, in response to the President's Memorandum, DOL issued a proposal to delay the April 10th applicability date of DOL's fiduciary rulemaking.[3] In addition to comments regarding the 60-day delay,[4] DOL also requested comments regarding its re-examination of the rule, including a number of specific questions regarding market responses to the final rule.

ICI's April 17th comment letter frames responses to DOL's questions in the context of the President's Memorandum. The letter points out that the rule meets all the criteria in the President's Memorandum for required rescission or revision: (1) the rule will harm investors—causing many to pay more for advice or lose access to advice; (2) the pending application of the rule has already caused dislocations and disruption within the retirement services industry; and (3) the rule will cause an increase in litigation and an increase in prices to access retirement products and services. The letter further notes that the rule runs counter to the Administration's stated priority of empowering Americans "to make their own financial decisions" and "to facilitate their ability to save for retirement." Based on these criteria set in the President's Memorandum, we argue that DOL must revise or rescind the rule.

In support of our position, we note that, as we predicted in our prior comment letters to DOL, the pending application of the rule is already accelerating the shift from commission-based accounts to fee-based accounts, which will cause many investors to pay more for advice. And that, even worse, the rule will cause many investors to lose access to advice, information, and education, which will result in significant losses to those investors. We further explain that DOL's regulatory impact analysis—on which the rule is based—is not supported by widely available market data and that its prior projections of purported gains to investors are speculative and do not support DOL's finding that gains to investors under the rule will offset the rule's adverse effects on investors. We argue that a more comprehensive impact analysis will lead to the conclusion that regulators need to cooperatively develop a targeted, harmonized best interest standard across markets. We explain that a more targeted and harmonized best interest standard will better protect investors while ensuring the continuation of affordable access to financial guidance to help individuals prepare for their financial needs.

Finally, the letter also argues that, pending its final determination (to revise or rescind), DOL must further delay the rule's applicability date until such a determination is made.

Shannon Salinas
Assistant General Counsel

endnotes

[1] The letter, submitted on April 17, 2017, is available at https://www.ici.org/pdf/17_ici_dol_fiduciary_reexamination_ltr.pdf.

[2] The President's Memorandum to the Secretary of Labor was published at 82 Fed. Reg. 9675 (February 7, 2017), available here: https://www.gpo.gov/fdsys/pkg/FR-2017-02-07/pdf/2017-02656.pdf.

[3] The proposal, published at 82 Fed. Reg. 12319 (March 2, 2017), is available at https://www.gpo.gov/fdsys/pkg/FR-2017-03-02/pdf/2017-04096.pdf. *See* ICI Memorandum No. 30617, dated March 2, 2017, available here: http://www.ici.org/my_ici/memorandum/memo30617..

[4] ICI submitted a comment letter on March 17, 2017, regarding the delay of the applicability date, available at https://www.ici.org/pdf/17_ici_dol_fiduciary_applicability_ltr.pdf. *See* ICI Memorandum No. 30648, dated March 20, 2017, available here http://www.ici.org/my_ici/memorandum/memo30648. DOL published the finalized the 60-day delay at 82 Fed. Reg. 16902 (April 7, 2017), available at https://www.gpo.gov/fdsys/pkg/FR-2017-04-07/pdf/2017-06914.pdf. *See* ICI Memorandum No. 30667, dated April 6, 2017, available here: http://www.ici.org/my_ici/memorandum/memo30667