

MEMO# 30818

August 8, 2017

ICI Submits Comment Letter to DOL in Response to RFI on Fiduciary Rulemaking

[30818]

August 8, 2017 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI Submits Comment Letter to DOL in Response to RFI on Fiduciary Rulemaking

On August 7, 2017, ICI submitted the attached letter to the Department of Labor (DOL) in response to DOL's request for information (RFI) regarding potential changes to the fiduciary rulemaking.[\[1\]](#) The RFI includes questions regarding potential new exemptions and changes to the fiduciary definition and existing exemptions.

We coordinated our DOL RFI response with ICI's response, submitted on the same day, to Securities and Exchange Commission (SEC) Chairman Clayton's request for public input on standards of conduct that apply to investment advisers and broker-dealers.[\[2\]](#) In both letters, we recommend that the SEC take the lead by adopting a best interest standard of conduct for broker-dealers when they provide recommendations to retail customers across retirement and non-retirement accounts. The standard of conduct would be intended to enhance, and not replace, the current suitability standard applicable to broker-dealers. We recommend that the DOL establish a new, streamlined prohibited transaction exemption relating to the fiduciary rule that would apply to SEC-regulated financial services providers—brokers subject to the new best-interest standard of conduct, and investment advisers subject to the fiduciary duty standard of conduct. We also explain that current SEC and FINRA examination programs and enforcement mechanisms serve to protect interests of retirement investors and support the issuance of such an exemption.

The letter to DOL also describes a number of changes that are needed to the overly broad definition of fiduciary investment advice. We urge DOL to modify the rule to (1) clarify that recommendations to make or increase contributions to a plan or IRA are not fiduciary investment advice, (2) provide unambiguous thresholds for determining when fiduciary advice is being provided, (3) simplify the exception for transactions with independent fiduciaries with financial expertise, (4) include a broad seller's carve-out, and (5) broaden the education exception.

Finally, the letter to DOL reiterates our request from our July 21, 2017 letter, urging the

DOL to immediately delay the January 1, 2018 applicability date.

Shannon Salinas
Assistant General Counsel - Retirement Policy

[Attachment](#)

endnotes

[1] The RFI, published at 82 Fed. Reg. 31278 (July 6, 2017), is available here: <https://www.gpo.gov/fdsys/pkg/FR-2017-07-06/pdf/2017-14101.pdf>. See ICI Memorandum No. 30767, dated July 6, 2017, available here: https://www.ici.org/my_ici/memorandum/memo30767. We also submitted a letter on July 21, 2017 in response to the RFI, regarding a delay of the January 1, 2018 applicability date. See ICI Memorandum No. 30795, dated July 21, 2017, available here: https://www.ici.org/my_ici/memorandum/memo30795.

[2] ICI's letter to Chairman Clayton is available at https://www.ici.org/pdf/17_ici_rfiresponse_ltr.pdf; Chairman Jay Clayton, Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers (June 1, 2017), is available at <https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31>. See ICI Memorandum No. 30725, dated June 2, 2017, available here: <https://www.iciglobal.org/iciglobal/pubs/memos/memo30725>

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