INVESTMENT COMPANY INSTITUTE

NEWS RELEASE

March 17, 2017

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ICI Urges Longer Delay to Permit Reassessment of Rule

Washington, DC, March 17, 2017—The Department of Labor (DOL) should delay the applicability date of its final fiduciary rule for at least 60 days to prevent significant harm to retirement savers and further costs and market disruptions, the Investment Company Institute says today in a comment letter.

The delay is necessary, ICI argues, to carry out President Trump’s order directing DOL to engage in a comprehensive review of the final rule and to determine whether the rule adversely affects the ability of Americans to gain access to retirement information and financial advice. Without the delay, mutual fund sponsors and other financial firms will incur substantial implementation costs—$5 billion in the rule’s first year—much of which will be beyond recovery if DOL ultimately rescinds or modifies the rule.

Those costs alone outweigh the Department’s estimate that its proposed 60-day delay could cost investors $147 million. ICI’s detailed analysis, however, demonstrates that the DOL’s estimate, based on a deeply flawed 2016 regulatory impact analysis, is “not only highly speculative, but illusory.” Adjusting DOL’s estimate for errors in the 2016 analysis, ICI finds that any costs from delaying the rule would fall in the range of $3 million to $10 million. And applying a more thorough analysis—taking into account the losses that retirement savers are likely to suffer if the final rule takes effect—ICI finds that delaying the rule by 60 days will actually create a benefit for investors of $414 million over the course of the first year after the delay.

Noting that uncertainty over the fiduciary rule already has subjected the market for retirement advice and services to considerable turmoil, ICI calls upon DOL to extend its proposed 60-day delay further and to synchronize the rule’s eventual applicability date with the timing of DOL’s decision on rescinding or modifying the final rule. If DOL decides to modify the rule, the delay should continue during and beyond the modification process. “Anything less will only result in more confusion, unnecessary costs, and inefficiencies in the marketplace,” ICI notes.

ICI Research Supports Delay to Avoid Further Harm to Investors, Reassess Rule

“We find that a delay of the fiduciary rule’s applicability date is well justified and urgently needed to avoid further negative consequences for affected investors, and to allow DOL sufficient time to prepare an updated economic and legal analysis as directed by the President,” says ICI Chief Economist Brian Reid. “This analysis should more fully consider how the final rule could limit retirement savers’ access to guidance, products, and services, or how such limits could affect savers—particularly those with small account balances.”

ICI General Counsel David Blass adds, “We already are seeing changes in the industry resulting in many ‘orphaned’ accounts, where retirement investors have lost access to investment advice, as a result of efforts toward fiduciary rule implementation. And, as ICI predicted, fee-based accounts in many cases will not be available to low- and middle-income IRA investors who cannot meet minimum account-balance requirements. We believe that a comprehensive reexamination by DOL of the fiduciary rule will show that it is inconsistent with the President’s stated priorities of empowering Americans to make their own financial decisions, and of facilitating their ability to save and build the individual wealth necessary to enjoy a secure retirement.”

DOL Analysis Should Consider Changed Business Models, Effects on Investors

ICI’s letter describes how changes in the industry’s business models, prompted by the need to comply with the fiduciary rule, already are hurting investors—as ICI predicted in previous submissions to DOL that quantified such impacts (see pages 9–22 of today’s letter). In this regard, says ICI, the following factors should be weighed in DOL’s analysis of the currently proposed delay:

- Increased costs for small-account holders. Failing to delay the applicability date would hasten the movement toward fee-based accounts. Yet for many retirement savers—particularly small-account holders and buy-and-hold investors—a commission-based model can deliver advice more cost-efficiently than fee-based models. ICI estimates that the fiduciary rule’s push toward fee-based accounts will cost retirement savers $47 billion over 10 years (see pages 15–18 of today’s letter).
- For many investors, a loss of access to advice, information, and education represents a significant cost. The Department’s calculation of benefits from the fiduciary rule—based on the assumption that investors’ returns will improve as they move away from front-load shares—ignores the cost of investment mistakes by investors who will be left without advice. ICI estimates that those mistakes will reduce retirement savers’ returns by $62 billion over 10 years. The cost to investors of higher fees and mistakes made from lack of advice would total roughly $109 billion over 10 years (see pages 18–19 of today’s letter).
- Significant and unrecoverable sunk costs, if the fiduciary rule is ultimately modified or rescinded. Such sunk costs include up to $94 million relating to only one set of product changes: the creation of T shares. In addition to relieving industry of start-up costs and day-to-day compliance costs, a delay in the applicability of the final rule will reduce the risk and costs of increased litigation that financial firms are likely to face under the rule (see pages 19–22 of today’s letter).

For more information about ICI’s perspective and extensive research on the DOL fiduciary rule, please go to ICI’s [DOL Fiduciary Rule Resource Center].