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# DOL Must Rescind or Revise Fiduciary Rule to Protect Retirement Savers

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## Immediate Further Delay of Rule Implementation Is Needed to Avert Serious Market Disruption, Harm to Retirement Savers

**Washington, DC, April 18, 2017**—The Department of Labor (DOL)—in carrying out its reexamination of the fiduciary rule, as required by President Trump's memorandum in February—must rescind or revise the rule because it adversely affects Americans' access to retirement information and financial advice, the Investment Company Institute (ICI) says in a comment letter to the DOL, released today.

"America's retirement savers are already being harmed by the poorly conceived and convoluted DOL fiduciary rule, as millions lose access to investment products and advice," says ICI President and CEO Paul Schott Stevens. "For their protection, President Trump has ordered a comprehensive reexamination of the rule. As our letter urges, the DOL must extend the rule's current compliance date to permit this reexamination before the rule is implemented, to avoid even more extensive disruption to the market and further harm to investors. We strongly believe that financial advisers should act in the best interest of all of their clients, not just those investing through retirement accounts, and we encourage the DOL to coordinate with the Securities and Exchange Commission to achieve a harmonized best interest standard."

### Immediate Delay of Rule's Compliance Date Will Avoid Disruption and Investor Harm

ICI's letter asks the DOL to immediately extend the fiduciary rule's current compliance date of June 9, to avoid very serious disruption and harm to retirement savers. Implementing the rule on June 9, would,

as the DOL has acknowledged, precede completion of the required reexamination—a recipe for chaos and uncertainty in the market, the letter says. ICI's letter urges the department to further extend the rule's compliance date—until the DOL has completed its reexamination and decided whether to rescind or revise the rule and—if it chooses to revise—what modifications to make.

ICI's comment letter also provides analysis and insight on the reexamination process, in response to the DOL's solicitation of public comments.

"Based on market experience thus far and our analysis of the data, it is clear that the DOL will have to either rescind or revise the rule to comply with the president's directive," says ICI Chief Economist Brian Reid. "We urge the Department, in its updated analysis of the rule's likely impact, to try to shed light on the concerns regulators seek to address in the rule and determine the best solution, rather than starting with a predetermined agenda of eliminating perceived potential conflicts in the retirement marketplace and using the regulatory impact analysis to justify that effort."

"The current rule upends the retirement marketplace. Rather than empowering retirement savers, it substitutes the Department's judgment for what products, services, and compensation structures should be available to those savers," says ICI General Counsel David Blass. "It limits choice of products and services, particularly for IRA investors, and constrains investor education in a variety of ways, including impeding conversations with investors about how to structure distributions from the retirement plans and IRAs. We continue to call for a best interest standard of care, developed by the DOL in coordination with the Securities and Exchange Commission, that applies across retirement and nonretirement accounts and ensures all investors have affordable access to financial advice."

## Why the DOL Must Rescind or Revise the Fiduciary Rule

The president's memorandum requires the DOL to determine whether the rule may adversely affect the ability of Americans to gain access to retirement information and financial advice. It directs the department to apply specific criteria, based upon the evidence available, to decide whether to rescind or revise the rule. ICI demonstrates that in carrying out the reexamination, the department will find that the fiduciary rule runs afoul of all the criteria in the president's memorandum. The letter cites the following key points to support its conclusions:

- **The rule will harm investors—causing many to pay more for advice or lose access to advice.** The pending application of the rule is accelerating the shift from commission-based accounts to fee-based accounts, which will cause many investors to pay more for advice. Many investors with smaller account balances that do not qualify for a fee-based account will lose access to advice, information, and education—resulting in significant losses to those investors, ICI says.

- **Small accounts are numerous, and "small savers" rely on advisers.** The DOL asserts that few households with "small IRAs" receive financial advice. In fact, nearly 3.2 million households with traditional IRAs of less than $50,000 hold their accounts through full-service brokers, according to ICI's IRA Owners Survey.

- **ICI's economic analysis disproves the DOL finding that gains to investors under the rule will offset the rule's adverse effects on investors.** The department's prior projections of purported gains to investors are speculative and do not support that finding. Even the DOL acknowledges that its prior conclusions are "uncertain and incomplete," and based on a limited analysis in one market segment, namely IRA investments in front-end load mutual funds. ICI finds that the DOL's analysis is not supported by widely available market data.
- **The pending application of the rule has already caused dislocations and disruption within the retirement services industry.** As has been widely reported, ICI's letter notes, several large intermediaries have announced changes to service offerings, including firms announcing that they will no longer offer mutual funds in IRA brokerage accounts; others no longer offering any IRA brokerage accounts at all; firms reducing web-based financial education tools; and others announcing that brokerage services for lower-balance accounts will be discontinued.
- **The rule will cause an increase in litigation and an increase in prices to access retirement products and services.** Numerous experts have reported that the expansive fiduciary definition created by the rule, and the obtuse conditions of the Best Interest Contract (BIC) exemption in particular, will result in increased litigation, particularly in the IRA marketplace. This is largely because the plaintiffs' bar is intentionally the rule's primary enforcement mechanism for ensuring compliance with the rule and BIC, ICI says.
- **The department's comprehensive impact analysis will lead to the conclusion that regulators need to cooperatively develop a targeted, harmonized best interest standard across markets.** A coordinated effort by the DOL and the Securities and Exchange Commission will better protect investors and also ensure the continuation of affordable access to financial guidance to help individuals prepare for their financial needs.

The ICI letter also criticizes the bifurcated approach the DOL took two weeks ago in delaying the applicability of the rule and exemptions. That approach fails to address key compliance concerns raised by the financial services industry and perpetuates harm to investors (see pages 35–37 of the letter). Essentially, the DOL's approach allows the rule defining who is a fiduciary and the BIC exemption's "impartial conduct standard" to take effect on June 9—before the DOL can make a final determination as to whether the rule and related exemptions should be rescinded or revised. ICI concludes that this approach is contrary to the intent of the president's directive. In short, the letter concludes, the DOL is putting the expansive fiduciary rule into effect, despite the fact that it adversely affects investors and therefore must be revised or rescinded.

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