T. Rowe Price®
INVEST WITH CONFIDENCE

Margaret H. Raymond
Vice President
Managing Counsel

April 17, 2017

Via Email to *EBSA.FiduciaryRuleExamination@dol.gov*

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N–5655,
U.S. Department of Labor
200 Constitution Avenue NW.
Washington, DC 20210

Attention: Fiduciary Rule Examination
RIN 1210–AB79

Dear Sir or Madam:

On behalf of T. Rowe Price Associates, Inc. and affiliates ("T. Rowe Price"), we appreciate the chance to provide our perspectives on the questions posed in the February 3, 2017 Presidential Memorandum concerning the Fiduciary Advice Rule, 29 C.F.R. Section 2510.3-21, and associated exemptions including amendments (the "Rule"). Throughout this rulemaking process, we have stressed how consistent the fundamental goals of the U. S. Department of Labor's rulemaking are with T. Rowe Price's own values. T. Rowe Price has long functioned in a fiduciary capacity when we manage assets for mutual funds and institutional investors, and we have a tradition of putting our clients' interests first in all circumstances. Nonetheless, we have concerns with some of the Rule's approaches to improving protections for retirement investors and plans. The Department's informal guidance in Frequently Asked Questions ("FAQs") issued since finalization of the Fiduciary Advice Rule has raised additional concerns for us. Accordingly, we welcome the opportunity to provide our views on the questions posed by the President.

T. Rowe Price Background. T. Rowe Price Associates, Inc. serves as investment adviser to the T. Rowe Price family of mutual funds ("Price Mutual Funds") and collective trusts maintained by its affiliate, T. Rowe Price Trust Company. Price Mutual Funds, which are distributed by T. Rowe Price Investment Services, Inc., a registered broker-dealer, are known for consistent investment process and strong

T. Rowe Price Associates, Inc.
margaret_raymond@troweprice.com
T: 410-345-5724
F: 410-345-6575

4515 Painters Mill Road
Owings Mills, MD 21117-4903

investment performance at moderate cost.[1] Through mutual funds and commingled trusts, as well as its sub-advisory and separate account management services, T. Rowe Price serves institutions—including both large and small business retirement plans—and individuals. T. Rowe Price assets under management ("AUM") total almost $811 billion as of December 31, 2016, of which 69% are held in retirement related accounts, including ERISA-governed plans and IRAs.

Overview. The Rule has already resulted in substantial disruptions in the retirement services industry, and is likely to result in more. Some of these disruptions may be beneficial to investors, such as the increase in availability of lower cost solutions for those whose needs can be met through robo-advisory services, and the introduction of lower cost mutual fund share classes. Many changes, however, are not likely to benefit retirement investors or plans. A number of firms have announced their intention to limit services for small-balance investors. At least one firm is planning to prohibit mutual funds in IRAs, while others are banning commission-based products in IRAs to the detriment of buy-and-hold investors. The Rule has been cited as the precipitating factor for a concentration in the industry, as some firms exit the retirement services business altogether, while others have merged with larger firms. These trends are concerning, and may result in fewer providers and services, especially for smaller balance investors, and potentially higher prices. In this letter, however, we focus on direct impacts that our clients and customers will experience. Specifically, we will outline examples of harm to plan participants, retail retirement investors and plans.

Adverse Impacts On Plan Participants

T. Rowe Price has determined that it will not provide advice as of the Rule's applicability date to participants in plans it recordkeeps. This decision reflects our concern that the exemption requirements for providing such advice are either unworkable or so complex as to interfere with participants' access to helpful guidance. This decision also reflects our view that in this litigious environment some plan sponsors might prefer to avoid any increase in potential liability associated with oversight of a new fiduciary.[2]

---

[1] As of December 31, 2016, over 86% of Price Mutual Funds outperformed their 10-year Lipper average, and over 75% of all share classes of Price Mutual Funds (excluding funds used in insurance products) outperformed their Lipper average for the 1- , 3-, 5- and 10-year periods on a cumulative total return basis. As of December 31, 2016 over 79% of the Price Mutual Funds for individual investors have expense ratios below their Lipper category average.

[2] Even if the Department were to modify exemptions to lessen substantially the interference with firm/participant interactions, some sponsors would remain hesitant to accept the responsibility of offering fiduciary-level advice. As a result, T. Rowe Price would be required to offer participant support under two different operating models, an advisory model and an educational model. Such a result would increase our operating costs in a business (participant recordkeeping) that already has very narrow margins, and has experienced recent consolidations as a result.

T. Rowe has a long history in its recordkeeping business of providing quality education to help participants make informed decisions. We have done that by presenting compelling content based on core principals of financial education that promotes increased savings and proper asset allocation. After the Rule's applicability date, participants we service will no longer receive targeted suggestions on some important topics, but will instead receive general education that avoids fiduciary advice (as newly defined under the Rule). But education alone has drawbacks: it requires participants to be sufficiently astute to translate the information and sometimes lengthy disclosures into a course of action. In contrast, targeted materials that include suggestions or calls to action help participants understand both the possible choice as well as the next steps, should they choose to take a suggested path.

In order to avoid the unworkable fiduciary construct, T. Rowe Price's interactions will be changed to avoid personalization and targeting in materials that address investments or investment management topics. Such an approach is contrary to the increased personalization and targeting that individuals experience in every aspect of their lives. Web users are used to advertisements that reflect their browsing history, preferences, context and intent. It is commonplace to receive targeted and personalized messaging from virtually every commercial establishment with which an individual conducts business. Marketing research suggests that there are greater "click through" and action rates for personalized emails,[3] which is one reason T. Rowe Price uses personalization. Against this backdrop, the Rule's assumption that individuals are not well-equipped to distinguish personalized or targeted messaging from fiduciary level advice is flawed. The Rule's misperception of participant confusion has the result of converting plan-related communications to theoretical and general discussions. This is true, even if the messaging is designed to support retirement savings or retirement readiness.

The following examples illustrate circumstances under which valuable messages will become less effective due to Rule constraints:

<u>Contribution messages</u>. T. Rowe Price believes that individuals often do not know how to approach retirement savings, and that one simple action our firm can take is to help participants understand a good next step. Our analysis shows that a 15% contribution rate (including employer match contributions, if any) is likely to result in retirement readiness at the end of a career. Before issuance of the January 13, 2017

[3]Personalization of subject lines in emails increases open rates by 54%. (Statista, 2014). Up to 74% of online consumers report being frustrated by messages that are not relevant or do not fit their interests. (Janrain's 2013 Online Personal Experience). T. Rowe Price's own experience supports the importance of personalization and targeting: our 2016 data shows that the average number of participants who completed beneficiary updates after the introduction of personalized messaging with a strong call to action to do so increased 93%.

FAQs, many of our plan participant messages reinforced the importance of saving and suggested a target 15% rate, or—where applicable—a contribution that at least took full advantage of an employer match. The issuance of FAQ 9 and 10 (issued January 13, 2017), suggesting that a service provider is a fiduciary when it recommends contributions, will—if the Rule and its interpretation is finalized—require us to remove these messages from materials specifically directed to individual participants. Such a change has the potential to threaten the level of savings that participants achieve, and is in direct conflict with the role that many plan sponsors ask us to serve today in our interactions with their participants.

Roll In messages. After the Rule's applicability date, T. Rowe Price will no longer be able to encourage participants to consolidate savings in their employer plans. We will educate participants about all of their options, but will not suggest such a step or promote the virtues of the employer's plan. As a result, participants in plans with attentive fiduciaries and carefully curated line-ups will be required themselves to understand the benefits of the plan compared to other choices for retirement savings.

Distribution messages. A similar concern is illustrated with conversations about distributions. After the Rule is applicable, we will be unable to steer a participant away from a loan that might hamper their retirement success, or warn a participant about the likely loss in earnings power over the long term that he or she may experience if he/she replaces plan investments with a loan at a fixed interest rate.

Diversification campaigns. Yet another example of targeted communications that are beneficial arises in the context of diversification campaigns. These communications are directed to single fund investors (such as those who have all of their assets in a money market fund or in employer stock) and are designed to suggest that a participant diversify his or her account. If these campaigns are permissible at all, the wording must be neutral and educational to avoid crossing the advice line, with the result that the campaign is less likely to be impactful.

These real-life examples illustrate the potentially serious harm to the overall success of the defined contribution retirement system presented by the Rule. While well-intentioned, the Department's focus on the existence of conflicts as the central problem for resolution ignores the much bigger problem of inadequate retirement savings. It is important to understand that employers are unlikely to fill the void (as suggested by FAQ 9 issued January 13, 2017): employers typically hire service providers to undertake this work. If the Rule prohibits beneficial suggestions (or imposes cumbersome exemption requirements that interfere with the natural flow of interaction before such suggestions are delivered), then participants will be left to sort through the neutral, educational messages on their own, or pay out of pocket for advice from a third party to assist. Such regulatory constraints on plan service providers are particularly unwarranted, as these interactions today are overseen by plan sponsor fiduciaries who

are accustomed to ensuring service providers do not overreach in their participant interactions.

Adverse Impacts On Individual Retirement Savers

As noted, a number of firms have announced plans to change the services that they offer to customers, or to limit substantially the choices available to small balance investors. T. Rowe Price maintains a direct-sold retail business in which we offer T. Rowe Price mutual funds to individuals. We have recently launched advice services that will connect our customers to the appropriate Price Mutual Fund or Funds, such as a "robo" managed account service available to investors with more than $50,000, or a point-in-time nondiscretionary advice service available to anyone with the minimum balance required by Price Mutual Funds (generally, $1,000 for IRAs). Despite these increased services, we are concerned that individuals saving for retirement through an IRA will be harmed. The examples listed above of adverse impacts on participants also apply to individual retirement savers. Like participants, these investors will be unable to access simple suggestions on a variety of topics without entering into a formal advice relationship. Investors who want to receive rules of thumb specific to the question or transaction they are contemplating are unlikely to want to go through the contract and/or detailed disclosure required by the available exemptions; accordingly, we are not convinced that broadening our advice offers to cover messages encouraging retirement savings, discouraging distributions before retirement, recommending consolidation or promoting the virtues of diversification will be an effective way to help individual investors. .

The conservative approach adopted by the Rule is unnecessary for a direct-sold proprietary model such as that maintained by T. Rowe Price's retail business. Just as few consumers are confused that Ford benefits from the sale of Fords at a car dealership, very few individuals who contact T. Rowe Price are confused about the fact that T. Rowe Price as a business benefits when investors purchase and hold T. Rowe Price mutual funds. Yet, T. Rowe Price is unable to identify for any given retail customer a subset of our 100+ funds available for purchase without insisting that the customer enter into an advisory relationship (with all the associated disclosures and contracts required under applicable exemptions). This level of formality may be daunting for some of our retail investors, and is likely to discourage straightforward and simple interactions between T. Rowe Price and its retail customers.

Adverse Impacts on Plan Sponsors And Fiduciaries

Plan sponsors and fiduciaries of all size plans will be negatively impacted by the Rule.

When addressing services for their participants, sponsors of defined contribution plans of all sizes will have the difficult choice among 1) potential co-fiduciary liability for service provider/participant interactions that were previously non-fiduciary in nature; 2) reduced retirement readiness for plan participants as savings messages become more diluted and less impactful; or 3) the burden of undertaking themselves maintenance of a call center and communications capabilities to avoid involvement of a "conflicted" service provider.

Sophisticated large plan sponsor fiduciaries will receive unnecessary disclosures with every interaction and every piece of investment or investment management related collateral, as T. Rowe Price adds the disclaimers required to avoid inadvertent fiduciary advice as required by 29 C.F.R. §2510.3-21(c)(1)(iii) for interactions with independent fiduciaries with financial expertise[4] or by 29 C.F.R. §2510.3-21(b)(2)(ii)(B) for RFP responses.[5] Given the premise that these fiduciaries understand their role vis-à-vis a service provider and are capable of evaluating the products and services offered (not to mention the requirement for fee disclosure in the context of ERISA plans), these disclaimers serve no purpose.

Fiduciaries of small and medium sized plans will have even greater burdens. Such fiduciaries will be asked to certify their financial expertise (measured in part by assets under their control) and to undertake the obligation to notify all service providers if those circumstances change. Those that cannot so certify will have greater hurdles. They will either receive fewer services (for example, no narrowing of funds for their consideration), or be required to retain and pay for advisers to be present at each interaction with a service provider on investment or investment management topics. In addition, small plan fiduciaries will be left on their own to select advisers, as trusted service providers will be unable to provide a list of advisers for their consideration. The prospect of reduced service or extra cost for small plan sponsor fiduciaries is very real, and has little justification when all fiduciaries—whether overseeing large or small plans— have been held for more than 40 years to a standard of care, skill, diligence and prudence. The Rule's increase in burdens on small business owners is likely to reduce the willingness of these businesses to sponsor plans, and may reduce the number of Americans with access to employer-sponsored retirement savings plans.

Disruptions Among Industry Providers That Harm Retirement Plans And Investors

[4] In order to avoid fiduciary status, those dealing with independent fiduciaries with financial expertise, as defined, must "fairly inform[] the independent fiduciary that the person is not undertaking to provide impartial investment advice or to give advice in a fiduciary capacity in connection with the transaction and fairly informs the independent fiduciary of the existence and nature of the person's financial interests in the transaction."

[5] In order to avoid fiduciary status in a response to an RFP, a firm is required to disclose "whether the person identified the limited or sample set of investment alternatives has a financial interest in any of the alternatives, and if so, the precise nature of such interest."

There is no question that the Rule has been disruptive to the industry in ways that are detrimental to plans and retirement investors. One example is particularly striking: A prominent national brokerage firm has announced that it plans, after the DOL Rule's applicability date, to ban mutual funds from IRAs. Mutual funds have played an important role in the financial lives of millions of Americans, with benefits of transparency and ready access to diversified portfolios that are professionally managed. As a provider of low cost actively managed mutual funds with strong investment performance, we believe in the value that Price Mutual Funds can offer to retail investors, including those saving for retirement. A Rule that has caused at least one firm to restrict access by IRA holders to all mutual funds, including funds of T. Rowe Price and other low-cost, high quality investment firms, is disruptive in ways that harm the end retirement investors.

T. Rowe Price itself has experienced disruption harmful to our clients and customers.. T. Rowe Price, like all service providers, has been (and will continue to be) required to undertake compliance costs. The amount of change to all aspects of business is profound, and has distracted from other initiatives designed to benefit our customers. Given the breadth of the Rule and applicable exemptions, it is unlikely that substantial compliance efforts will conclude on the applicability date. . The detailed FAQs provide a window into the enormity of the efforts that must be undertaken now and in the future. For example, when delivering model portfolios, an investment provider must seek a contractual commitment that the recipient (typically an adviser) will not pass through the costs of the model to its clients on an itemized bill. (*See* FAQ 29 issued January 13, 2017.) For those firms already providing model portfolios, that single FAQ would require the renegotiation of every contract for the service, even when the model portfolio provider has no relationship with (or knowledge of) the ultimate recipient for whom the model is being used. As the Department continues to issue guidance on the scope of the Rule, it is likely that new compliance efforts will be launched through sub-regulatory guidance. As a result, we can expect to continue expending significant compliance efforts to meet the Rule's requirements after the applicability date.

Litigation is highly likely to increase.

Private ERISA class action litigation on fiduciary topics is enjoying a new renaissance. In 2015, more than 17 ERISA lawsuits were filed attacking fees and performance of defined contribution plan investment options, and in 2016, that number has increased to at least 40 lawsuits. Against this backdrop, it is very likely that the Rule will contribute to the trend. There are several reasons for this:

Within the ERISA-governed plan space, the Rule increases the number of firms and individuals who are fiduciaries within the meaning of ERISA. The Rule opens the door for an increase in class action litigation against IRA providers. Inasmuch as the

Rule was viewed as important to enforcement, this is an outcome that the Department not only acknowledges but seeks.

The Rule is sufficiently ambiguous that it is likely that different parties will reach different conclusions of whether an interaction is advice. The line between a "suggestion" and selective information is thin, and reasonable people may draw that line differently in litigation. Because the requirement of "mutuality" of understanding has been removed from the Rule, one person's view of whether a communication was a suggestion, or whether it was individualized or specifically directed, may differ from another's view, with the result that there will be controversies requiring litigation to resolve.

The Rule will also create differences of opinion as to whether a firm has met its fiduciary obligations. Such a litigation-prone ambiguity is presented in the requirement in Impartial Conduct Standards (incorporated into many exemptions) that a firm providing fiduciary advice act "without regard to financial or other interests of the fiduciary, any affiliate or other party." *See, e.g.,* the newly inserted section II(g) in PTE 77-4, as amended. It is clear from the context that the Department does not interpret this phrase to prohibit a fiduciary firm from recommending proprietary products that result in revenue to the firm when appropriate for the client or customer. Yet, because the phrase is ill-suited to the context, others may be confused into believing that "without regard" prohibits fiduciaries from encouraging use of proprietary products, again leading to controversies requiring court intervention.

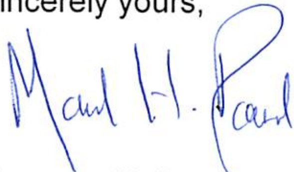
Further Delay Is Appropriate

We join with those trade associations, including the Society of Professional Administrators and Recordkeepers, the Investment Company Institute, and the Securities Industry and Financial Markets Association, in urging the Department of Labor to delay the Rule's applicability until after it has completed examination of the President's questions. As our comment letter illustrates, the Rule has substantial adverse impacts that were not intended, and perhaps not anticipated, by the Department. These impacts result from drawing the line between advice and non-advisory interactions in the wrong place, and will hurt plans, plan participants and individual retirement savers as soon as the Rule becomes effective. It is wise for the Department to delay the Rule's applicability until it can fully understand—with the benefit of learnings from the past year of attempted implementation—the full impacts of the Rule.

* * * * * * * * * * * *

We hope that the observations provided above are helpful in reviewing the questions posed in the February 3, 2017 Presidential Memorandum. We appreciate the chance to share our views on this important topic.

Sincerely yours,



Margaret H. Raymond

MHR/tms