July 21, 2017

*Submitted Electronically – eRulemaking Portal – Docket ID: EBSA-2017-0004*

Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Suite 400
Washington, DC 20210

**Re: Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (RIN 1210-AB82): Question 1**

Ladies and Gentlemen:

Nationwide[1] appreciates the opportunity to provide comments in response to the Department of Labor's (the "Department") recently published Request for Information (the "Request").[2] As identified in the Request, the Department is seeking comment in connection with its ongoing examination of the final regulation (collectively the "Fiduciary Rule") that redefined fiduciary investment advice related to ERISA §3(21)(A)(ii)[3] and also established related new and amended administrative class exemptions from the prohibited transaction provisions of ERISA and the Internal Revenue Code. This letter is being provided in direct response to Question 1 of the Request in which the Department has sought input on the advisability of extending the January 1, 2018, applicability date of certain provisions in the Best Interest Contract Exemption (the "BIC Exemption") and the amendments to Prohibited Transaction Class Exemption 84-24 ("84-24").[4] January 1, 2018, also marks the end of the Fiduciary Rule's current transition period (the "Transition Period"). Nationwide will respond to the other questions in the Request in a separate letter.

For the past 40 years, Nationwide has helped millions of America's retirement savers prepare for and live in retirement. Like the Department, Nationwide believes that financial

[1] Nationwide is a Fortune 75 company based in Columbus, Ohio, and one of the largest and strongest diversified insurance and financial services organization in the United States (rated A+ by both A.M. Best and Standard and Poor's).

[2] 82 Fed. Reg. 31,278.

[3] 81 Fed. Reg. 20,945.

[4] 82 Fed. Reg. 31,279.

services firms must provide products and services that are in the best interests of America's workers. With the U.S. retirement marketplace continuing to demand innovative and increasingly complex retirement solutions, **the need for a retirement plan regulatory framework that focuses on increased transparency and the elimination of conflict while at the same time protecting consumers' access to <u>choice</u>, <u>advice</u> and <u>affordable products</u> is timely**.

Nationwide is one of the largest, strongest, and most diversified financial services organizations in the U.S. This position has provided us with a unique view into unintended and harmful consequences that the Fiduciary Rule is having on America's retirement savers. These consequences include:

- ***A reduction in available investment options* –** We have observed a reduction in the availability of investment products and services for retirement savers, resulting in less choice and less access to guaranteed income.
- ***A reduction in access to advice* –** We have observed an increase in firms communicating to retirement savers that they will no longer provide services to certain investors due to low account values. Additionally, we have observed firms moving away from providing fiduciary advice or no longer offering certain product categories.
- ***An increase in cost* –** We have observed a trend of increased costs being assessed by distribution partners as they seek to levelize compensation. The ultimate impact of this trend will likely be increased costs associated with retirement products and services.

Overall, we believe these consequences will negatively impact all retirement savers. However, we expect that these reductions in available investment options and access to advice, and increase in cost will have the greatest impact on lower-income retirement savers. Nationwide commends the Department for its continued examination of the Fiduciary Rule and for seeking additional comment that could ultimately result in a coordinated and workable financial regulation that addresses most, if not all, of these unintended consequences.

**<u>Extending the Transition Period Benefits Retirement Investors:</u>**

Nationwide supports the Department's renewed effort to improve the Fiduciary Rule, and we recommend that the Department take action to extend the Transition Period. Extension prevents the confusion and unnecessary transition costs that would result from implementing the remaining provisions of the prohibited transaction exemptions scheduled to become applicable on January 1, 2018.

These costs are significant. For example, the "full" BIC Exemption requires a great deal of new investment into systems and processes related to disclosures and business structures. As the Department is in the midst of reviewing the Fiduciary Rule and could make significant changes as a result, retirement investors could face two major (and costly) transition periods instead of only one.

For these reasons, Nationwide respectfully requests that the Department extend the Transition Period for at least one year to January 1, 2019. This extension will ensure there is an orderly transition to the new regulatory environment, protecting participants and IRA owners from unnecessary costs and further confusion. While the advantages of extending the Transition Period are numerous, Nationwide believes the following are **key considerations** that should prompt the Department to take action:

1. **Extending the Transition Period provides the Department with the time needed to constructively engage with the SEC, FINRA, NAIC and other regulators in an effort to fully coordinate their respective roles in regulating retirement products and services, resulting in better outcomes for retirement investors.**
2. **Extending the Transition Period provides the industry adequate time to implement and adhere to any changes made to the Fiduciary Rule, BIC Exemption, 84-24, or new streamlined exemptions following the completion of the current ongoing review. Along these lines, the delay would also allow the industry sufficient time for new retirement products and services to be developed to support the Fiduciary Rule following any changes.**
3. **Extending the Transition Period will help mitigate impending and avoidable market disruptions that will trigger on January 1, 2018, unless the further time is allocated to identify and implement workable solutions. These disruptions include a retirement saver's inability to access products and services traditionally offered through an insurance intermediary after January 1st due to the Department's failure to provide a majority of insurance intermediaries with a viable path for satisfying the definition of "Financial Institution" under the BIC Exemption.**
4. **Extending the Transition Period will allow the Department to assess the impact of the expanded definition of fiduciary, the impartial conduct standards, and associated prohibited transaction exemptions without affecting requirements of the Fiduciary Rule that have already been allowed to become applicable.**
5. **Extending the Transition Period will allow the Department to mitigate the undue impact that litigation risk is having on the cost of advisory services. The Fiduciary Rule should seek to encourage the meritorious claims of retirement savers while also discouraging the opportunistic and/or frivolous claims expected to be driven by plaintiffs' counsel seeking a financial windfall.**

Nationwide also strongly recommends that regardless of the duration of an extension, the Department not permit the Transition Period to end until: (1) the Department completes its examination of the Fiduciary Rule; (2) any amendments to the Fiduciary Rule are finalized; and (3) a new, reasonable Transition Period to implement those changes (*e.g.*, twelve months) is established.

**Extension Does Not Present Additional Costs and Risks to Retirement Savers:**

As the Department wrote in its economic analysis of the impact of the Transition Period, most of the anticipated benefits to retirement investors come from the Impartial Conduct Standards that became applicable on June 9, 2017, and not from the prohibited transaction exemptions that are scheduled to become applicable on January 1, 2018.[5] These standards ensure that retirement savers pay no more than reasonable fees and that advisors must act in the best interest of their clients. Department action to extend the Transition Period will not materially harm retirement savers. However, inaction by the Department will result in the significant harms described above.

**Conclusion:**

At Nationwide, acting in our clients' best interest has always been, and will continue to be, at the core of our values. We therefore support the goals of the Fiduciary Rule and further support the Department's efforts to improve its execution. Extending the Transition Period is essential to protecting our clients' best interests and the overall best interests of America's retirement savers.

In addition to our comments here, we lend our support to the comments filed by the American Counsel of Life Insurers (ACLI), Committee of Annuity Insurers (CAI), the Financial Services Roundtable (FSR), the Insurers Retirement Institute (IRI), National Association for Fixed Annuities (NAFA), the SPARK Institute (SPARK), and the U.S. Chamber of Commerce (U.S. Chamber). These comment letters highlight the key considerations described above and further elaborate on the harm that ignoring them will have on America's retirement savers.

If you have questions about anything in this letter, or if we can be of any further assistance as the Department considers extending the Applicability Date, please feel free to contact Ben Brewster in our Government Relations Department at 202-347-5914 or via email at brewstb1@nationwide.com.

Sincerely,

Kirt A. Walker
President and Chief Operating Officer
Nationwide Financial

[5] "Because of Firms' anticipated efforts to satisfy the Impartial Conduct Standards…the Department believes that most…of the investor gains predicted in the 2016 RIA for the transition period will remain intact." 82 Fed. Reg. 16,907 (Apr. 7, 2017).