PIABA
protecting public investors

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July 21, 2017

Office of Exemption Determinations
Employee Benefits Security Administration
Attn: D-11933
U.S. Department of Labor
200 Constitution Avenue, N.W., Suite 400
Washington, D.C. 20210

Re: RIN 1210-AB82; Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions

To Whom It May Concern:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules which govern the conduct of those who provide advice to investors.

PIABA strongly opposes any postponement of the January 1, 2018 applicability date of the exemptions (collectively, the "PTEs") which accompany the Department of Labor's Conflict of Interest Rule (the "Rule"). Previously, the Department solicited comments on its proposal to delay implementation of the Rule and the PTEs[1] in response to the President's Memorandum to the Secretary of Labor directing the Department to "examine the Fiduciary Duty Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice."[2] Despite eventually setting the applicability deadline for the Rule and certain aspects of the PTEs as June 9, 2017 (a delay from the original April 10, 2017

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[1] *See*, Dep't of Labor, *Definition of the Term "Fiduciary"; Conflict of Interest Rule-Retirement Investment Advice; Best Interest Contract Exemption (Prohibited Transaction Exemption 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016-02); Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, 84-24 and 86-128*, 82 Fed. Reg. 12319 (Mar. 2, 2017) ("Proposal for Delay"), available at https://www.federalregister.gov/documents/2017/03/02/2017-04096/definition-of-the-term-fiduciary-conflict-of-interest-rule-retirement-investment-advice-best.
[2] White House, *Presidential Memorandum on Fiduciary Duty Rule* (Feb. 3, 2017), available at https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule.

deadline), the many conditions of the PTEs are not set to be implemented until January 1, 2018.[3] The Department now seeks comment on whether a further delay of the PTEs would "reduce burdens on financial services providers and benefit retirement investors by allowing for more efficient implementation responsive to recent market developments."[4]

The Rule and PTEs were adopted after significant study and analysis

The Department adopted the Rule and the PTEs after it engaged in the rulemaking process over at least a six year period. The Department filed its initial proposal to amend the definition of "investment advice fiduciary" in October 2010.[5] The Department received over 300 comment letters on the 2010 proposal, held a public hearing at which 38 speakers testified, and then received an addition 60 comments following the public hearing.[6] The Department met with various stakeholders over the next several years.[7] This process resulted in the Department withdrawing the 2010 proposal and submitting a new proposal in April 2015.[8] In 2015, the Department received over 3,000 comment letters and over 300,000 submissions made as part of 30 separate petitions submitted.[9] The Department held four days of public hearings at which over 75 speakers testified.[10] On April 8, 2016, the Department filed its final rule in the Federal Register.[11] It provided for an initial applicability date of April 10, 2017 for the Rule and certain conditions of the PTEs; and a second applicability date of January 1, 2018 for the remaining conditions of the PTEs.[12] The Department provided for a phased implementation period to allow firms the benefit of the relevant PTEs while the firms made changes necessary to be in full

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[3] *See*, Dep't of Labor, *Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice; Best Interest Contract Exemption (Prohibited Transaction Exemption 2016–01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016–02); Prohibited Transaction Exemptions 75–1, 77–4, 80–83, 83–1, 84–24 and 86–128*, 82 Fed. Reg. 16902 (Apr. 7, 2017) ("Notice of Delay"), available at https://www.federalregister.gov/documents/2017/04/07/2017-06914/definition-of-the-term-fiduciary-conflict-of-interest-rule-retirement-investment-advice-best.

[4] Dep't of Labor, *Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions*, 82 Fed. Reg. 31278 (July 6, 2017) ("Request for Information"), available at https://www.federalregister.gov/documents/2017/07/06/2017-14101/request-for-information-regarding-the-fiduciary-rule-and-prohibited-transaction-exemptions.

[5] *See*, Dep't of Labor, *Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice; Final Rule*, 81 Fed. Reg. 20946, 20956 (April 8, 2016) ("DOL Final Rule"), available at http://webapps.DOL.gov/FederalRegister/PdfDisplay.aspx?DocId=28806.

[6] *Id*. at 20957.

[7] *Id*.

[8] *Id*.

[9] *Id*. at 20958.

[10] *Id*.

[11] *Id*. at 20946.

[12] *Id*.

compliance by January 1, 2018.[13] In support of the final rule, the Department prepared a 395 page Regulatory Impact Analysis.[14]

When issuing the Rule, the Department determined that "in light of the importance of the final rule's consumer protections and the significance of the continuing monetary harm to retirement investors without the rule's changes, an applicability date of April 10, 2017, is adequate time for plans and their affected financial services and other service providers to adjust to the basic change from non-fiduciary to fiduciary status."[15]

Due to the uncertainty surrounding the implementation of the Rule and PTEs following the issuance of the Presidential Memo, the Department sought to give firms additional time to comply with the Rule and PTEs.[16] After filing its request for comments on whether a delay would be appropriate, the Department received approximately 193,000 comment and petition letters: "Approximately 15,000 commenters and petitioners support a delay of 60 days or longer, with some requesting at least 180 days and some up to 240 days or a year or longer (including an indefinite delay or repeal); and, by contrast, 178,000 commenters and petitioners oppose any delay whatsoever."[17] Notwithstanding the overwhelming support for the Rule and PTEs moving forward as originally approved, the Department delayed the Rule and PTEs. The Department delayed the applicability date of the Rule until June 9, 2017, and delayed the applicability dates of the PTEs so that the Impartial Conduct Standard would be implemented on June 9, 2017, but many other conditions of the PTEs would not be implemented until January 1, 2018.[18]

Now, the Department has filed a request for information as to whether a further delay of implementation of the remaining conditions of the PTEs is warranted.[19] However, the Department's rationale behind the request for information is flawed. The Department asks whether a delay will "reduce burdens on financial services providers and benefit retirement investors by allowing for more efficient implementation responsive to recent market developments." While the Department understandably has to be cognizant of the burdens of any rulemaking on financial services companies, its mission is to "foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States…"[20] Similarly, the Employee Benefits Security Administration's ("EBSA") mission is to "assure the security of the retirement, health and other workplace related benefits of America's workers and their families.

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[13] *Id.*
[14] *See*, Dep't of Labor, *Regulating Advice Markets; Definition Of The Term "Fiduciary"; Conflicts Of Interest - Retirement Investment Advice; Regulatory Impact Analysis for Final Rule and Exemptions* (April 2016) ("RIA"), available at https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2/conflict-of-interest-ria.pdf.
[15] DOL Final Rule, *supra* n. 5 at 20946.
[16] *See*, Notice of Delay, *supra* n. 3.
[17] *Id.* at 16903.
[18] *See*, *id.*
[19] *See*, Request for Information, *supra* n. 4.
[20] Dep't of Labor, *Our Mission*, available at https://www.dol.gov/general/aboutdol/mission.

[It] will accomplish this mission by developing effective regulations; assisting and educating workers, plan sponsors, fiduciaries and service providers; and vigorously enforcing the law."[21]

After being drafted, vetted, withdrawn, re-written, vetted, approved and revised again, the Rule and the PTEs are just the type of "effective regulations" required of the EBSA. Moreover, the Rule and PTEs have already been adopted and, in large part, gone into effect. A change in the Administration does not make the work done by the Department and EBSA less meaningful or appropriate. The Department's Request for Information focuses on the wrong stakeholders – the impact on financial services companies rather than retirement savers. The Department should be questioning whether delay or evisceration of the full implementation of these effective regulations will allow it to foster, promote, and develop the welfare of wage earners and retirees. The Department (and the financial services companies) should be spending its time, money and efforts getting ready to start "vigorously enforcing" the Rule and PTEs.

Moreover, to the extent there have been any recent "market developments" they have included developments such as mutual fund clean shares, which have only moved forward in anticipation of the applicability of the Rule and PTEs.[22] Further delay and/or gutting of the Rule and PTEs would only have a detrimental impact on the development of these types of new products. In the meanwhile, retirement investors will continue to be harmed by unmitigated conflicts of interest that exist with old products and limited ability to address any violations of the Impartial Conduct Standard.

<u>Further Delay of the PTEs will be detrimental to retirement investors</u>

It is crucial that the Rule and the PTEs continue to progress so that retirement investors may be fully protected. Currently, brokers, often called financial advisors, are governed primarily by FINRA rules and state law (which is inconsistent across the country). The FINRA suitability rule requires that a broker only have a "reasonable basis" for making an investment recommendation, and that the recommendation be "suitable" for the investor. Under this suitability standard, a broker can sell a high fee, high expense fund to the investor rather than a low cost S&P 500 Index fund if the broker determines that the higher priced fund is also suitable. The broker is not required to disclose to the investor that there were other lower cost

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[21] Dep't of Labor, Employee Benefits Security Administration, *Our Mission*, available at https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/mission-statement.

[22] *See, e.g.*, Greg Iacurci, *DOL fiduciary rule pushes indexed annuity carriers to develop new products*, Investment News (May 25, 2017), available at http://www.investmentnews.com/article/20170525/FREE/170529942/dol-fiduciary-rule-pushes-indexed-annuity-carriers-to-develop-new; Greg Iacurci, *New mutual funds under DOL fiduciary rule could save investors at least 0.50% in returns: Morningstar*, Investment News (Apr. 18, 2017), available at http://www.investmentnews.com/article/20170418/FREE/170419918/new-mutual-funds-under-dol-fiduciary-rule-could-save-investors-at.

suitable options available or the conflicts of interest which may have influenced the broker's recommendation. This conflicted advice costs investors $17 billion each year.[23]

Under the Rule, financial advisors are obligated to eliminate conflicts of interest which permeate the financial services industry. Financial advisors are given the ability to manage and mitigate certain conflicts, so long as they comply with an exemption to the Rule which provides transparency to the investor. No longer will the financial advisor be permitted to recommend an investment product that, even if suitable, is not in a customer's best interest given the costs, fees, commissions, lack of liquidity, and potential surrender charges.

The Department created the Best Interest Contract Exemption (the "BICE"), which would allow firms to continue receiving commissions and other forms of compensation that are common to retail transactions involving retirement plans, which would otherwise be prohibited under the Rule.[24] However, the BICE also ensures that investors receive retirement investment advice that is in their best interests. Pursuant to the BICE, financial advisors and firms that provide retirement advice may continue to receive commissions, 12b-1 fees, revenue sharing payments from issuers, sales loads or other similar compensation, provided that the investment advice they give is in the investor's best interest and "that they implement safeguards against the harmful impact of conflicts of interest on investment advice."[25] Those safeguards include warranties that the firms have done what they are required to do, and a contract that clearly sets forth the financial advisors' obligations to the retirement investor.

If the PTEs are not permitted to be fully implemented on January 1, 2018, retirement investors will continue to be harmed by the same conflicts of interests that made the Rule and PTEs necessary in the first place. PIABA members represent investors who have been harmed under the current standards in mandatory, binding arbitration actions. PIABA has previously provided multiple stories of retirement investors who have been harmed under the prior standards.[26] This harm cannot be allowed to continue.

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[23] *See*, White House Council of Economic Advisers, *The Effects of Conflicted Investment Advice on Retirement Savings* (Feb. 2015); available at https://obamawhitehouse.archives.gov/sites/default/files/docs/cea_coi_report_final.pdf.
[24] DOL Final Rule, *supra* n. 5 at 20991.
[25] *Id.* at 21003, 21004.
[26] *See*, PIABA, *Comment Letter to the Dep't of Labor* (July 21, 2015), available at https://piaba.org/system/files/comment_letter_pdfs/DOL%20Best%20Interest%20Rule%20Comment,%20RIN%201210-AB32%20(July%2021,%202015).pdf; PIABA, *Comment Letter to the Dep't of Labor* (Sept. 24, 2015), available at https://piaba.org/system/files/comment_letter_pdfs/DOL%20Best%20Interest%20Rule%20Comment,%20RIN%201210-AB32%20(September%2024,%202015).pdf; PIABA, *Comment Letter to the Dep't of Labor* (Mar. 17, 2017), available at https://piaba.org/system/files/comment_letter_pdfs/DOL%20Comment%20Letter,%20RIN%201210-AB79%20(March%2017,%202017).pdf; and Joseph Peiffer, *Statement for the Record Submitted to the United States Department of Labor Employee Benefits Security Administration On Conflict of Interest*

For years, retirement investors have been sold products that do little more than benefit the financial advisors and firms selling them. Financial advisors have sold retirees complex, non-conventional investments such as Real Estate Investment Trusts (REITs) and structured products. Losses on these investments are not readily apparent because they are not traded on an exchange. The lack of public trading hides the high expenses built into the REITs, which over the years greatly reduces the value of the investments. These types of investments have a number of risks associated with them, which often make them inappropriate investments for retirement funds. Yet, they generate high payments to the firms and financial advisors selling them. Of course, a firm's inability to continue to sell products such as these will impact a firm's bottom line, increasing the burden on the firm. However, this is not a valid justification for undoing investor protection. Firms must operate fairly, earing a profit while providing retirement investors the services and protections they have been promised, and deserve.
Retirement investors are entitled to do business with financial advisors who are acting in their best interest. ERISA and the Internal Revenue Code require nothing less. While the Rule and PTEs currently require that those providing advice to retirement investors act pursuant to the Impartial Conduct Standards, retirement investors should be given assurances that the conduct standards are more than mere marketing fluff – that firms and financial advisors will hold themselves to those standards and that if they fail, there will be a remedy available to harmed retirement investors. The BICE contract and accompanying warranties will help ensure that retirement investors have confidence in the standards and the relationship between them and their financial advisors.

Something more than the standards themselves is needed to ensure that financial advisors stay true to their word. Financial advisors have presented themselves in their advertisements and on their websites as trusted counselors and advisors for years.[27] Yet, that has not prevented firms from denying that there is any duty to act in an investor's best interest when faced with such claims in an arbitration.[28] Delaying or removing the warranty and contract aspects of the PTEs will perpetuate this dichotomy and give firms the ability to challenge the obligations under the impartial conduct standards.

Retirement investors seek help to manage their funds because they are unable to navigate the complex financial services market alone. They expect that they will receive appropriate advice,

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Proposed Rule Public Hearing (Aug. 11, 2015), available at https://piaba.org/piaba-newsroom/congressional-testimony-statement-record-submitted-united-states-department-labor-emp.

[27] *See*, PIABA Report, *Major Investor Losses Due to Conflicted Advice: Brokerage Industry Advertising Creates the Illusion of a Fiduciary Duty; Misleading Ads Fuel Confusion, Underscore Need for Fiduciary Standard* (March 25, 2015) ("PIABA Report"), available at https://piaba.org/system/files/pdfs/PIABA%20Conflicted%20Advice%20Report.pdf; *see also*, Consumer Federation of America & Americans for Financial Reform, *Financial Advisor or Investment Salesperson? Brokers and Insurers Want to Have it Both Ways* (Jan. 18, 2017), available at http://ourfinancialsecurity.org/wp-content/uploads/2017/01/Financial-Advisor-or-Investment-Salesperson.pdf.

[28] *See*, PIABA Report, supra n. 27 at pp. 9-16.

and that if something goes wrong, they will have some way to try to make it right. Further delaying the key investor protections within the PTEs will remove these protections, leaving retirement investors with little more than a hope that their financial advisor is acting in their best interests.

The remaining aspects of the PTEs are essential to ensure investor protection

The Rule and PTEs are of vital importance today because IRAs and 401(k) and 403(b) retirement plans have become the primary tool for retirement planning and savings for millions of working Americans. Pensions have become rare, making retirement investors more responsible for ensuring they have the necessary funds to support themselves in retirement. One-time transactions like rollovers will involve *trillions* of dollars over the next five years and are often among the most significant financial decisions families will ever make.[29] As funds are rolled into IRAs from workplace retirement plans, investors will seek guidance and advice from financial advisors.
Some firms have already begun making changes necessary to comply with the existing Rule and PTEs.[30] Any further delay will mean the Department is sending a clear message that the regulations it has spent years preparing are simply not that important, and if firms just delay, they will not have to do anything. What are firms to do when new regulations are released?

In examining the efforts made to date by the industry, a report by Consumer Federation of America determined that:

[29] "Rollovers" are expected to approach $2.4 trillion cumulatively from 2016 through 2020. *See*, RIA, *supra* n. 14.
[30] See, e.g., Merrill Lynch tweet (Nov. 10, 2016) ("We're committed to a higher standard for retirement accounts. We view the Department of Labor Fiduciary Rule as a positive step for the industry and great news for investors. We support it wholeheartedly."), available at https://t.co/OMw73LvR6d; Morgan Stanley Press Release, *Morgan Stanley to Preserve Client Choice for Retirement Accounts* (Oct. 26, 2016) ("Morgan Stanley's core values of putting clients first and doing the right thing are behind our plan for implementing the Department of Labor's upcoming fiduciary rule for retirement accounts. ...We believe our advisors can most effectively uphold a fiduciary standard of care and work in clients' best interests by continuing to offer choice."), available at https://www.morganstanley.com/press-releases/morgan-stanley-to-preserve-client-choice-for-retirement-accounts; Morgan Stanley article, *Morgan Stanley Preserves Client Choice in Response to DOL Rule* (Oct. 26, 2016) ("Moving forward, our clients will continue to have access to commission-based retirement brokerage accounts with recommendations from us that will be consistent with the DOL Fiduciary Rule and Best Interest Contract Exemption...Morgan Stanley...will also offer clients the choice of fee-based retirement account arrangements."), available at http://www.morganstanley.com/articles/DOL-fiduciary-rule; Consumer Federation of America, *The Department of Labor Conflict of Interest Rule is Already Delivering Benefits to Workers and Retirees: Delay Puts Those Benefits at Risk* (Jan. 31, 2017) ("CFA Report"), available at http://consumerfed.org/wp-content/uploads/2017/01/1-31-17-DOL-Rule-Delivering-Benefits_Fact-Sheet.pdf.

(i) the DOL rule is already eliminating the most harmful conflicts associated with commission-based advice without eliminating access to commission-based advice;

(ii) despite dire predictions to the contrary, most firms are continuing to offer commission-based retirement investment advice; and,

(iii) far from driving up investors' costs, the rule is already responsible for significant cost reductions.[31]

It is important that the Rule and PTEs continue to move forward so that the industry has certainty in its obligations, and retirement investors receive the protections they need, have been promised, and to which they are entitled.

The industry has not offered any legitimate reasons for delaying or eliminating the key aspects of the Rule and PTEs. Firms will have had over a year and a half to implement key aspects of the BICE: the warranties and contract. These aspects of the exemption will provide certainty as to a firm's obligations and will offer retirement investors some assurances that the firms are doing what is required of them. Retaining these aspects of the BICE will increase litigation costs only if firms are not adhering to them. These aspects of the BICE will ensure that retirement investors have a means of holding firms accountable when they fail to adhere to the standards.

Moreover, retaining these aspects of the BICE should not hamper a firm's ability to do business. Several states have long considered brokers fiduciaries under state common law.[32] Firms operating in those states continue to offer the same levels of advice and continue to do business. They have not closed shop because of the potential litigation consequences of being held to a fiduciary standard. A 2012 study found that there is no statistically significant increase in compliance costs in states in which there is a clear fiduciary standard and ones in which there is no fiduciary standard.[33] Moreover, FINRA registered firms are also already subject to a ban on class action waivers, yet they continue to do business with the investing public.[34]

What is the point of the protections offered by the Rule and the PTEs if there is no meaningful enforcement of them? All aspects of the PTEs currently awaiting implementation should move forward without any further delay so that retirement investors receive the protections intended by the Rule.

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[31] CFA Report, *supra* n. 30.
[32] *See*, e.g. California, Georgia, Florida, Missouri, Puerto Rico, South Carolina, and South Dakota.
[33] *See*, Michael Finke and Thomas P. Langdon, *The Impact of the Broker-Dealer Fiduciary Standard on Financial Advice* (Mar. 9, 2012), available at https://www.onefpa.org/journal/Pages/The%20Impact%20of%20the%20Broker-Dealer%20Fiduciary%20Standard%20on%20Financial%20Advice.aspx.
[34] *See*, FINRA Rules 2268(f) and 12204.

<u>Conclusion</u>

Further delaying the full implementation of the Rule and PTEs will cost investors their hard earned retirement money. SaveOurRetirement.com estimates that retirement savers lose between $57 million and $117 million every day due to conflicted investment advice, amounting to at least $21 billion annually.[35] The Council of Economic Advisers estimate Americans are suffering $17 billion in losses annually due to conflicted advice they receive from financial advisors.[36] It is essential that there be full implementation of the Rule and PTEs to ensure that firms are not diverting funds from retirement investors due to their improper and overreaching conflicts of interest.

It is also worth noting that the Rule and PTEs have already been reviewed by three separate federal courts following challenges by various industry members.[37] In each case, the federal judge determined that the Rule and PTEs should go forward.[38] In considering whether to issue an injunction to delay implementation of the Rule and PTEs, Judge Crabtree stated:

an injunction will lead to confusion about the law and likely produce unwarranted delay. This is not in the public's interest. Any injunction thus will produce a public harm that outweighs any harm that plaintiff may sustain from the rule change. The DOL has determined that the rule changes will benefit retirement investors throughout the United States by requiring investment advisers to act in the best interest of those investors. Congress authorized the DOL to evaluate these competing interests and it has concluded that significant public interests favor the proposed regulatory changes. As already explained, evidence in the administrative record supports the DOL's determination and the court finds no basis for contradicting those findings.[39]

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[35] *See*, Save our Retirement, *Comment Letter to the Dep't of Labor* (May 8, 2015), available at http://saveourretirement.com/cms/wp-content/uploads/2015/02/DOL-SOR-Letter-Comment-Period-Request-5-8-15.pdf.

[36] *See*, White House Council of Economic Advisers, *The Effects of Conflicted Investment Advice on Retirement Savings*, *supra* n. 23. "Conflicted advice" refers to advice given on particular investment products where the financial advisor is compensated in fees and commissions that depend on which investment product the customers buys.

[37] *National Association for Fixed Annuities v. Perez* (D.C. 2016)(No. 16-CV-01035); *Chamber of Commerce v. U.S. Dep't of Labor* (N.D. Tex. 2016)(No. 16-CV-01476-M) consolidated with *American Council of Life Insurers v. U.S. Dep't of Labor* (No. 16-CV-01530-C) and *Indexed Annuity Leadership Council v. Perez* (No. 16-CV-01537-N); *Market Synergy Group, Inc. v. U.S. Dep't of Labor* (Kan. 2016)(16-CV-04083); and *Thrivent Financial for Lutherans v. Perez* (Minn. 2016)(16-CV-03289).

[38] *National Association for Fixed Annuities v. Perez,* 2016 WL 6573480 (D. D.C. 2016); *Chamber of Commerce v. U.S. Dep't of Labor,* 2017 WL 514424 (N.D. Tex. 2017); and *Market Synergy Group, Inc. v. U.S. Dep't of Labor,* 2017 WL 661592 (D. Kan. 2017).

[39] *Market Synergy Group, Inc. v. U S. Dep't of Labor,* No. 16-CV-4083-DDC-KGS, 2016 WL 6948061, at *30 (D. Kan. Nov. 28, 2016).

The Department has previously justified the Rule and its implementation period, which contemplates the remaining conditions of the PTEs becoming effective in January 2018. Nothing has changed which would justify a reconsideration at this time. The Department also pointed out that full compliance with the Rule and PTEs would cost the industry $16 billion over ten years.[40] Conversely, underperformance of investments due to poor fund selection could cost IRA investors between $95 billion and $189 billion over the next 10 years, and these costs may be reduced by between $33 billion and $36 billion with full implementation of the Rule and PTEs.[41] Consequentially, neither the industry nor the Department can justify further delay of the full implantation of the Rule and PTEs.

Accordingly, the Department should proceed with the applicability timeline set forth in the Rule and PTEs and ensure that investors are protected.

Respectfully submitted,

Marnie C. Lambert, President

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[40] *Id.*

[41] Proposal for Delay, *supra* n. 1.