

April 28, 2017

The Honorable Alexander Acosta  
Secretary  
Department of Labor  
200 Constitution Ave. N.W.  
Washington D.C. 20210

Dear Secretary Acosta:

On February 3, 2017, the President directed the Secretary of Labor to examine the Department of Labor's ("DOL") final rule entitled *Definition of the term "Fiduciary"; Conflict of Interest Rule-Retirement Investment Advice*.<sup>1</sup> President Trump's Memorandum orders the DOL to prepare an updated economic and legal analysis of the rule and to specifically consider the potential reduction in Americans' access to retirement information, advice, and products; dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees; and the potential increase in litigation or in the prices that investors and retirees must pay to gain access to retirement services<sup>2</sup>.

On April 7, 2017, the DOL's Employee Benefits Security Administration ("EBSA") issued a final rule that contains provisions that seem to contravene the directives in the Presidential Memorandum of February 3<sup>3</sup>. For instance, EBSA determined it was appropriate to extend the applicability of the rule by only 60 days and certain other provisions until January 1, 2018—despite flatly conceding that the "careful and thoughtful process" required by the President's directive will take significantly longer than 60 days.<sup>4</sup> Additionally, EBSA affirmatively stated that the fiduciary definition and Impartial Conduct Standards "will become applicable on June 9, 2017," even before the substantive comment period regarding the review of the rule had closed.<sup>5</sup> We are concerned that the final rule prejudged the outcome of

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<sup>1</sup> Memorandum for the Secretary of Labor: *Fiduciary Duty Rule*, 82 Fed. Reg. 9,675 (Feb. 7, 2017).

<sup>2</sup> *See id.*

<sup>3</sup> Definition of the term "Fiduciary"; Conflict of Interest Rule-Retirement Investment Advice, 82 Fed. Reg. 16,902 (Apr. 7, 2017).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

the review instructed by the Presidential Memorandum, even if additional delays are eventually deemed necessary.

Since the issuance of this final rule, there have been reports that EBSA employees adopted this approach in a calculated effort to undermine the President's directive, thereby further jeopardizing Americans' near-term access to financial information and retirement advice<sup>6</sup>. We are concerned by these reports that Administration staff undermined the President objectives. However, we are pleased that with your confirmation by the Senate you will bring much needed leadership to this issue.

Due to these concerns, please provide the following by May 12, 2017 to better inform our understanding of EBSA's actions:

1. All communications, between staff and any non-governmental entity, relating to the Presidential Memorandum of February 3, 2017.
2. All communications, between staff and any nongovernmental entity, relating to the Proposed Rule published in the *Federal Register* on March 2, 2017.
3. All d communications, between staff and any nongovernmental entity, relating to the Final Rule published in the *Federal Register* on April 7, 2017.
4. All communications, between staff and any nongovernmental entity, relating to cost benefit analysis of the Final Rule published in the *Federal Register* on April 7, 2017
5. All communications, between staff and employees at other executive branch agencies, relating to EBSA's implementation of President's Memorandum of February 3, 2017.

Additionally, we ask that you please make Tim Hauser, the DOL's Deputy Assistant Secretary of the Employee Benefits Security Administration, available to brief committee staff on May 10, 2017.

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<sup>6</sup> Review & Outlook, *Labor Department Mutiny*, WALL ST. J., Apr. 13, 2017.

Honorable Alexander Acosta

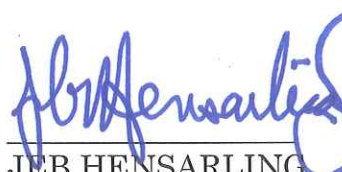

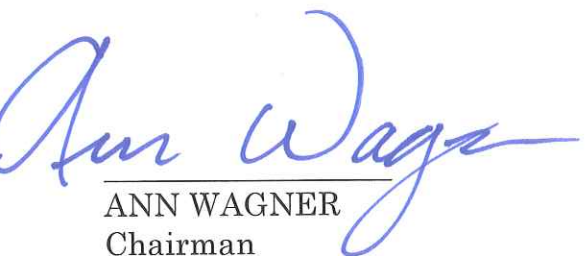
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In the meantime, due to the uncertainty facing stakeholders and the millions of customers they serve in the retirement advice industry with respect to provisions of the fiduciary rule coming into effect on June 9 while a comprehensive review of the rule is still ongoing, we also urge you to immediately move to extend the applicability date of the fiduciary rule in its entirety.

Thank you for your prompt attention to this request.

Sincerely,

 JEB HENSARLING Chairman	 BILL HUIZENGA Chairman Subcommittee on Capitol Markets, Securities, and Investment	 ANN WAGNER Chairman Subcommittee on Oversight and Investigations
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CC: Mr. Donald F. McGahn, White House Counsel