FINANCIAL SERVICES INSTITUTE

VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

September 24, 2015

Mr. Joseph S. Piacentini
Chief Economist and Director of Policy and Research
Employee Benefits Security Administration
U.S. Department of Labor
Washington, DC 20210

Re: Request for Supplementary Information Related to Oxford Economics Report Entitled "Economic Consequences of the US Department of Labor's Proposed New Fiduciary Standard"

Dear Mr. Piacentini:

I am in receipt of your letter dated August 26, 2015 requesting certain supplementary information related to the Financial Services Institute's [1] (FSI) joint study with Oxford Economics (OE). In response to your specific request, FSI provides the following additional information:

1. **Please summarize what type of information was collected via the interviews and survey, and how each support the report's cost estimates?**

Following its reading of the Department of Labor's (Department) Regulatory Impact Analysis and literature review and survey data obtained from FSI member firms, OE had several questions regarding how industry experts understood the operational mechanics of the proposed rule (Proposal), and how the rule would impact the business operations of FSI member companies. Calls were arranged with senior executives from 12 companies representative of FSI members. Each call typically lasted one hour, and generally included the CEO of the company. Often, the General Counsel, Chief Technology Officer, and other senior executives also participated on the call. These calls were organized around a script (described in response to question 4 below). By design, OE asked questions that were sufficiently open-ended to allow respondents an opportunity to describe the particular ways in which they saw their companies complying with the new requirements; adjusting their business practices; or otherwise adapting to the new business model that the rule would necessitate. The interviews were conducted over several weeks. As themes emerged and issues identified, more time was spent during later interviews on specific topics that appeared significant. For example, concern over the Best Interest Contract Exemption (BICE) was raised early and often. As these concerns

[1] The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

became better understood by OE, more time was spent during the interviews following up on more sophisticated concerns such as product structure and availability. Notwithstanding that very specific company issues were raised throughout the interviews, by the twelfth and final interview there were very few issues of a general nature being raised that had not be addressed previously. All of these general issues of concern are included in the OE report.

The report's numerical cost estimates were derived entirely from the email survey, which we describe in more detail in response to question 5 below. It is worth mentioning that the interviews informed the email cost survey, with the categories hashed out through back-and-forth discussions.

2. What are the identities of the financial institutions whose executives were interviewed? Alternatively, please characterize generally how closely these firms represent, or how they differ from, the industry at large.

The financial institutions interviewed were selected to represent a cross section of FSI's member independent financial services firms. The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives. These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

The interviewed firms included 3 small firms (i.e., up to 150 affiliated financial advisors), 3 mid-size firms (i.e., up to 500 affiliated financial advisors), 3 large-size firms (i.e., more than 500 affiliated financial advisor) and 3 insurance company affiliated firms (i.e., the financial services firm is owned by a parent insurance company). Nearly three dozen executives from these firms participated.

3. Please provide a description of the sample captured in the on-line survey and any other information that might assist in assessing the generalizability of the survey findings.

The email survey was intended to gauge the firm level estimated costs that FSI members anticipated would result following implementation of this Proposal. Many FSI members rely on third party clearing firms to complete a variety of services including custodying of securities, clearing and settlement of transactions and providing trading and other technology platforms. It was clear from the survey responses that many of these companies had not yet begun to analyze how compliance responsibilities would be shared between these independent companies and achieved via their third party technology platforms; nor had they begun analyzing how current business practices would be challenged. The ambiguities found in the survey results were an important reason why more in-depth interviews were necessary to understand the issues and costs that companies will grapple with should this rule be implemented. Consequently, the results of the on-line survey were not included in the report although the insights learned did help guide the subsequent OE interviews.

4. Please provide any scripts, questionnaires, and/or survey instruments used to elicit responses from survey participants.

I have attached a copy of our initial email survey for you reference. Initial Interviews with the financial institutions were organized around the following basic script:

(1) How will the Proposal impact your business? (Opened with a general question to allow companies to identify issues without any prompting):
  a. Costs of Implementation? Detailed discussions were held on what specific actions were going to be necessary to implement key components of the Proposal.
  b. Disruption to current Business Practices? Companies were asked about business disruptions likely to result from the rule. Much of this discussion focused on the disruption to sales and customer service models. Litigation risks were uniformly identified as a major disruption to business practices.
  c. How will costs be borne, mitigated or passed along? Specific questions were asked regarding conversion to fee based accounts, minimum balances, higher fees expected from third party technology platforms, etc.

(2) Impact on Customers: These were general questions regarding how customer service, product choice, and costs would change if the rule were implemented.

(3) Impact on Industry: Open Question: If regulation were implemented, how would the industry look differently five years from now?

Follow up conversations were not scripted.

5. Please provide raw survey data in csv format. In the absence of raw survey data, please provide descriptive statistics, including means and ranges by firm size category, for each of the questions posed to respondents.

The OE report includes the overall mean and median for each cost and the average total cost by firm size.

6. The report breaks down estimated costs across eight categories. Did the interviews or survey elicit separate cost estimates for the Proposal's various specific provisions within these categories? If so, please provide such separate estimates.

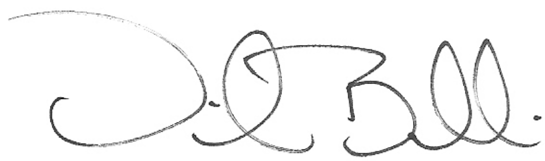
The email survey split out costs by business process required to comply with the Proposal, not by provision of the rules.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with the Department on this and other important regulatory efforts

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,



David T. Bellaire, Esq.
Executive Vice President & General Counsel

FINANCIAL SERVICES INSTITUTE

FSI DOL Fiduciary Rule Survey

1. How many producing financial advisors are registered with your firm?

- Small: 150 associated registered persons or less
- Mid-Size: 151-499 associated registered persons
- Large: 500 or more associated registered persons

2. Is your firm itself a "small business concern" for federal regulatory purposes, i.e., are your annual receipts $38.5 million or less?

- Yes
- No

3. What restrictions, if any, does your firm place on advisors working with IRA and retirement plan assets?

Check all the FIDUCIARY services below that advisors currently ARE NOT ALLOWED to provide. If the restrictions are subject to account size requirements by assets or revenue, please note that in the margin. Check all the items below if advisors are restricted from working with IRA and retirement plan assets at all, i.e., if your firm is not in the retirement market.

Advisors ARE NOT ALLOWED to provide:

- [ ] Plan sponsor level (selection and installation of plan, management of defined benefit assets, selection of 401(k) investment menu, etc.) on a FIDUCIARY basis
- [ ] Plan participant level (retirement plan savings in context of overall investment recommendations, asset allocation among plan investment menu, self-directed brokerage window, distributions, etc.) on a FIDUCIARY basis
- [ ] IRAs (rollover, selection of IRA and investments, etc.) on a FIDUCIARY basis

4. What restrictions, if any, does your firm place on advisors working with IRA and retirement plan assets?

Check all the NON-FIDUCIARY services below that advisors currently ARE NOT ALLOWED to provide. Please take notice of the distinctions between fiduciary and non-fiduciary services (under current law) in the descriptions below.

Advisors ARE NOT ALLOWED to provide:

- [ ] Plan sponsor level (selection and installation of plan, management of defined benefit assets, selection of 401(k) investment menu, etc.) on a NON-FIDUCIARY basis
- [ ] Plan participant level (retirement plan savings in context of overall investment recommendations, asset allocation among plan investment menu, self-directed brokerage window, distributions, etc.) on a NON-FIDUCIARY basis
- [ ] IRAs (rollover, selection of IRA and investments, etc.) on a NON-FIDUCIARY basis

5. If applicable, do you allow advisors to provide investment related advice and educational services for compensation to both a plan sponsor and participants in that plan?

- ( ) Yes
- ( ) No

6. If you answered YES to Question 5: What level of services do you allow representatives to provide to plan sponsors and plan participants? Check all that apply.

- [ ] 3(38) Investment Management to Plan Sponsor
- [ ] 3(38) Investment Management to Plan Participants
- [ ] 3(21) Investment Advice to Plan Sponsor
- [ ] 3(21) Investment Advice to Plan Participants
- [ ] Education to Plan Sponsor
- [ ] Education to Plan Participants

7. About what percent of your firm's business is in each of the following:

ERISA plans:	
Governmental/other non-ERISA plans:	
IRAs:	

8. If the DOL proposal is materially adopted as proposed, how if at all would your firm change its restrictions on advisors working with IRA and retirement plan assets?

Check all the FIDCIARY services below that advisors WOULD NOT ALLOWED to provide if the proposal is adopted. Check all the items below if your firm would leave the retirement market.

Advisors WOULD NOT BE ALLOWED to provide:

- [ ] Plan sponsor level (selection and installation of plan, management of defined benefit assets, selection of 401(k) investment menu, etc.) on a FIDUCIARY basis
- [ ] Plan participant level (retirement plan savings in context of overall investment recommendations, asset allocation among plan investment menu, self-directed brokerage window, distributions, etc.) on a FIDUCIARY basis

☐ IRAs (rollover, selection of IRA and investments, etc.) on a FIDUCIARY basis

9. If the DOL proposal is materially adopted as proposed, how if at all would your firm change its restrictions on advisors working with IRA and retirement plan assets?

Check all the NON-FIDUCIARY services below that advisors WOULD NOT ALLOWED to provide if the proposal is adopted. Check all the items below if your firm would leave the retirement market.

Advisors WOULD NOT BE ALLOWED to provide:

☐ Plan sponsor level (selection and installation of plan, management of defined benefit assets, selection of 401(k) investment menu, etc.) on a NON-FIDUCIARY basis

☐ Plan participant level (retirement plan savings in context of overall investment recommendations, asset allocation among plan investment menu, self-directed brokerage window, distributions, etc.) on a NON-FIDUCIARY basis

☐ IRAs (rollover, selection of IRA and investments, etc.) on a NON-FIDUCIARY basis

10. To the extent your firm would be active in the retirement market, what would be your fiduciary compliance strategy? (Check all that apply.)

☐ Provide only non-fiduciary services

☐ Limit fiduciary services to institutional plans only

☐ Migrate retirement business to an advisory model

☐ Make use of the Best Interest Contract Exemption

☐ Make use of other exemptions

☐ Other (please specify)

11. If the DOL proposal is materially adopted as proposed and your firm would remain in the retirement market, using your usual budgeting conventions, what do you estimate your all-in cost would be for your response to the DOL proposal?

For initial compliance/response:$ ____________________

On an ongoing annual basis:$ ____________________

12. If the DOL proposal is materially adopted as proposed and your firm would remain in the retirement market, what would be a reasonable time from publication of a final rule for your firm diligently to implement changes in response to the DOL proposal?

- Eight months
- Twelve months
- Twenty-four months
- Thirty-six months
- Other (please specify)

13. If the DOL proposal is materially adopted as proposed and your firm would remain in the retirement market, what if anything would you expect to change in the costs of the services provided in the retirement market? If that would vary by customer (plan sponsor, plan participant or IRA) or type of service, please so indicate in the margin.

- Costs to the customer would be about the same as for comparable services today
- Costs to customers in the retirement market would increase
- Costs to customers in the retirement market would decrease
- Costs would vary by customer type

14. If your firm would be reducing its involvement with or leaving the retirement market, what would be the reason for that? (Check all that apply.)

- Not willing to commit to acting in the “best interest” of retirement investors
- Too much change to our business model
- Our retirement investors would not accept the changes to our business model as serving their interests
- Technology costs
- Compliance costs and uncertainties
- Risk of litigation
- Other (please specify)

15. The BIC exemption requires firms to disclose the following information:

•A list identifying each asset (bank collective fund, exchange-traded fund, bond, debt security, annuity contract, etc.) purchased or sold within the past year, and the price at which the asset was sold;

•A statement of the total dollar amount of all fees and expenses paid by each plan or IRA with respect to each asset purchased, held, or sold during the past year;

•A statement of the total dollar amount of all compensation received by each adviser and registered broker-dealer, from any party, as a result of each asset sold, purchased, or held by a plan or IRA during the past year;

•All direct and indirect material compensation payable to each adviser, registered broker-dealer, or broker-dealer affiliate in connection with each asset that has been purchased, sold, or held by each plan or IRA within the past year. This compensation can be expressed as a monetary amount, as a formula, or as a percentage of the assets involved in each purchase, sale, or holding of the asset; and,

•The source of such direct or indirect compensation and how it varies within or among the available assets.

Will your firm have this information on-hand in a readily available format?

- ○ Yes
- ○ No

16. If you answered NO to Question 15, how will your firm go about procuring the information?

- ☐ Request from provider (please provide your best estimate of what the yearly cost will be to procure the required data in the field below)
- ☐ Develop an automated data feed (please provide your best estimate of what the yearly cost will be to procure the required data in the field below)

☐ Other (If selected, please provide what these methods would be, as well as your best estimate of what the yearly cost of these methods would be in the field below.)

Additional Information

17. What are the three changes that could be made to the DOL proposal that would best facilitate your firm’s ability to serve investors in the retirement market?

18. What inconsistencies have you identified between the DOL proposal and existing federal/state/SRO regulations to which your firm is subject?

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