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February 3, 2017

MEMORANDUM

MEMORANDUM FOR THE SECRETARY OF LABOR

SUBJECT: Fiduciary Duty Rule

One of the priorities of my Administration is to empower Americans to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses, such as buying a home and paying for college, and to withstand unexpected financial emergencies.

The Department of Labor’s (Department) final rule entitled, Definition of the Term “Fiduciary”; Conflict of Interest Rule—Retirement Investment Advice (Fiduciary Duty Rule), 81 Fed. Reg. 20946 (Apr. 8, 2016), may significantly alter the manner in which Americans can receive financial advice, and may not be consistent with the policies of this Administration.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

**Section 1.** *Department of Labor Review of Fiduciary Duty Rule.*

(a) The Department is directed 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. As part of this examination, the Department shall prepare an updated economic and legal analysis concerning the likely impact of the Fiduciary Duty Rule, which shall consider (but shall not be limited to) the following:

(i) Whether the anticipated applicability of the Fiduciary Duty Rule has harmed or is likely to harm investors due to a reduction of Americans’ access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice;

(ii) Whether the anticipated applicability of the Fiduciary Duty Rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees;

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(iii) Whether the Fiduciary Duty Rule is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services;

(iv) Whether the prohibited transaction exemptions (PTEs) issued in conjunction with the rule, especially the best interest contract exemption, substantially undermine the rule’s effectiveness at achieving its intended goals; and

(v) After consulting with the Attorney General, whether the Fiduciary Duty Rule violates the Administrative Procedure Act or any other applicable statute.

(b) If the Department makes an affirmative determination in paragraph (a)(i), (ii), (iii), (iv), or (v); or if you conclude for any other reason after appropriate review that the Fiduciary Duty Rule is inconsistent with the policy of this Administration; then you shall publish for notice and comment a proposed rule rescinding or revising the rule or proposed revisions to the PTEs, as appropriate.

(c) Pending your review of the Rule, and in view of pending litigation challenges to the Fiduciary Duty Rule, the Department shall exercise its available legal authority to postpone by an additional 180 days the applicability date of all provisions of the Rule that are not yet applicable on the date this Memorandum is issued. *See* 5 U.S.C. 705. The Department shall further consider whether an additional postponement of the Fiduciary Duty Rule’s applicability date should be instituted to ensure that affected entities have a reasonable period of time to come into compliance, taking into account the long lead times necessary for regulated entities to alter affected existing contracts, issue new contracts, and provide clear and accurate information and disclosures to plan sponsors, investors, and retirees.

(d) In consultation with the Department of Justice, you should consider whether to seek a stay of any litigation concerning the Fiduciary Duty Rule pending the completion of the review directed in this section.

**Section 2.** *General Provisions.*

(a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

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(ii) the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are hereby authorized and directed to publish this memorandum in the *Federal Register*.

DONALD J. TRUMP