



August 31, 2017

VIA WEBFORM: <https://www.sec.gov/cgi-bin/ruling-comments>

The Honorable Jay Clayton  
Chairman  
U. S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

**Re: Comment on the Standards of Conduct for Investment Advisers and  
Broker-Dealers**

Dear Chairman Clayton:

In the interest of our members – the men and women of the U.S. military and their families – United Services Automobile Association (“USAA”)<sup>1</sup> is pleased to provide our comments in response to the recent request from the Securities and Exchange Commission (“SEC” or “Commission”) for public comment on the standards of conduct for investment advisers and broker-dealers (“Request”).<sup>2</sup> We applaud the SEC’s thoughtful and inclusive efforts to revisit this critical issue at a time many industry participants and regulators are struggling to make sense of overly complex, cumbersome, and at times contradictory, fiduciary regulations. We welcome the SEC’s needed leadership in this area. Our comments focus on the needs of our investor base: retail investors, including those that are often referred to as “Main Street” investors. USAA believes that it can provide the SEC a unique perspective on the standard of conduct conversation, and we are eager to contribute to your dialogue with the industry.

Part I of this letter begins with an overview of USAA’s history, business model, and client base, and is followed by a summary of the guiding principles that we encourage the SEC to consider while developing a uniform standard of conduct. Part II provides our analysis with respect to a number of the questions raised in the Request.

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<sup>1</sup> “USAA” is used to refer collectively or individually, as the case requires, to United Services Automobile Association and its applicable affiliates.

<sup>2</sup> Jay Clayton, Chairman, SEC, *Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers* (June 1, 2017), <https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31>.

## **I. USAA AND OUR VIEW**

**About USAA.** USAA is a member-owned association, which together with its family of companies, serves members of the U.S. military and their families. For 95 years, since inception in 1922 by a group of U.S. Army officers, USAA has pursued a mission of facilitating the financial security of our members by providing a full range of highly competitive financial products and services, including personal lines of insurance, retail banking, and investments. Our core values of service, honesty, loyalty, and integrity have enabled us to perform consistently and be a source of stability for our members, even during the 2007-2008 financial crisis.

**USAA's Position.** USAA supports the SEC's efforts to advance a rational and workable framework for ensuring that a uniform standard of conduct applies to broker-dealers and advisers with respect to their provision of investment advice applicable to all investment accounts, including retirement and non-retirement accounts. A rational and workable framework would serve retail investors and industry participants and would allow firms to continue offering, under a consistent standard, a full array of services and solutions across different channels and business models to meet investor needs and choice. This uniform standard of conduct would not only specifically recognize and encourage firms that primarily serve retail investors, but would offer those firms flexibility to accommodate different types of service models and investment products with a view to serving investors. We are committed to working with the Commission, Commission Staff, and the U.S. Department of Labor ("DOL") in advancing such a standard.

**Our Business Model.** USAA's broker-dealer representatives offer a range of financial and insurance solutions designed to be responsive to our members' needs. To meet the unique needs of our members, we have developed multiple channels through which we communicate with our membership about USAA's products and services. USAA primarily uses telephone call centers to provide a convenient and centralized channel for our members to discuss financial matters. USAA also uses "video chat" and similar technologies to provide members the benefit of "in-person" meetings even when deployed thousands of miles away. Importantly, we also use "digital technology"—internet-based and mobile technology—to provide members some of the same services (*e.g.*, certain recommendations and advice on asset allocation) that they might otherwise access through telephonic or video chat interactions. Members have told us, and use data indicates, that digital technology is a preferred channel of communication for a significant and growing population of our membership.

Our mission calls upon us to provide advice and other services to individuals of varied financial sophistication, including many of modest means. Seeking to facilitate the financial security of our members begins with basic education, encouragement of financial stability, and an offering of products with a low initial investment or premium. Accordingly, we offer all members accessible financial advice and planning services, and our no-load USAA Mutual Funds boast some of the lowest investment minimums in the industry. Continuing to serve retail investors in this manner is notable in the current regulatory environment, as some firms have chosen to no longer serve this investor segment.<sup>3</sup>

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<sup>3</sup> As directed by President Trump, the DOL requested new information about the economic effects of its Fiduciary Rule approved in 2016 ("DOL Fiduciary Rule"). See Employee Benefits Security Administration, DOL, *Definition*

**Important Principles.** Similar to the guiding principles which Chairman Clayton recently set forth to guide the SEC mission, (“July Speech”)<sup>4</sup> USAA also has put forth principles that we consider necessary to our mission. USAA’s goal is to serve our retail investor members through the channel in which they choose to engage with us—whether through a telephone conversation with a USAA representative utilizing a brokerage or fee-based platform or through digital technology (e.g., a robo-adviser). Through these channels we look to provide a full array of services—including advice—and our members desire and expect that choice. With investors’ interests at the forefront, we strongly recommend that the Commission and its staff contemplate a standard of conduct that incorporates the following considerations:

1. Any proposal should:
  - a. facilitate all business models that aim to serve traditionally underserved retail investors, including, but not limited to, members of the U.S. military and their families, USAA’s particular focus;
  - b. ensure that retail investors are afforded the protections of a uniform standard of conduct with respect to all their investments – without regard to the type of accounts in which such investments are held (*i.e.*, retirement vs. non-retirement);
  - c. provide for the efficient use of digital technology to offer investment advice, education, and financial information to retail investors;
  - d. avoid (i) increasing costs for investors, (ii) incentivizing firms to exit the brokerage business or offer fewer options for advice and information, or (iii) limiting investor choice or reducing acquisition flexibility;
  - e. minimize unintended consequences, such as firms being incentivized to automatically direct retail investors to fee-based products and services as a fiduciary panacea;
  - f. not inhibit, or make overly cumbersome, the offering of proprietary investment products, where such products serve investors’ needs;
  - g. provide firms with a predictable and consistent forum for resolving disputes; and

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*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 FR 12319 (Mar. 2, 2017). A significant number of commenters noted that many financial service providers are limiting the investment types and products they will recommend.

<sup>4</sup> Chairman Clayton recently outlined eight principles that will guide his leadership at the SEC. See Jay Clayton, Chairman, SEC, Remarks at the Economic Club of New York (July 12, 2017) (Clayton Remarks at the Economic Club).

- h. provide a principles-based standard of conduct for investment advisers and broker-dealers, utilizing the legislative imprimatur in Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.<sup>5</sup> Such a standard would contain specific allowances or accommodations for the provision of advice to retail investors with low balances who seek certain, simple investment advice.
2. Specifically, for USAA: retail investors must continue to receive the level of service and convenience to which they are accustomed from USAA, and which is appropriate for them.
3. Retail investors must be able to easily receive important educational information to combat financial illiteracy without having an overly burdensome standard of conduct hampering an investor's access to such information.

Given its unique position as a primary regulator of investor accounts, we encourage the SEC to take the lead in collaborating with the DOL, the Financial Industry Regulatory Authority, Inc. ("FINRA"), state regulators, and other regulatory and model rule governing bodies to establish a framework for a standard of conduct applicable to broker-dealers that operates in concert with other standards of care to which they are subject. Further, because the SEC's standard of conduct would be principles-based, we envision that the standard of conduct would be implemented by FINRA, such that FINRA staff would be authorized to issue guidance on the same.

## II. RESPONSES TO SPECIFIC QUESTIONS

With the above principles in mind, we address certain of the specific questions set forth in the Request. The questions from the Request that we address are copied below (bolded and italicized), and are followed by our responses.

***Market developments and advances in technology continue to transform the ways in which retail investors obtain advice (e.g., robo-advisers, fintech). How do retail investors perceive the duties that apply when investment advice is provided in new ways, or by new market entrants? Is this perception out of step with the actual obligations of these entities and, if so, in what ways? How should these market developments and advances in technology affect the Commission's consideration of potential future actions? What steps should the Commission take, if any, to address potential confusion or lack of information in these emerging areas?***

USAA believes that advances in financial technology should not be viewed as the primary driver of any potential solution by the SEC to establish a uniform investment adviser/broker-dealer standard of conduct. In other words, the advent and refinement of

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<sup>5</sup> Dodd-Frank Wall Street Reform & Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376, 1824 (2010).

robo-advisers<sup>6</sup> should not be positioned as a cure-all – and the “one-size-fits-all” quick fix – with respect to the delivery of fiduciary level advisory services to retail investors. Any uniform standard should accommodate advisory services delivered through *both* traditional channels, such as telephone centers, and emerging channels and platforms, such as automated advisers, which are often colloquially referred to as “robo-advisers.”

At the same time, it is important for any uniform standard to accommodate automated or robo-advice. It is also worth noting that a portion of the regulated community believes that it is not possible for robo-advisers to meet the standards for DOL fiduciaries. They argue that, while functional, the computer programs do not yet have the capacity to discharge a fiduciary duty that meets DOL’s standards. Typically, users of robo-advisers are asked a limited set of questions that reflect a narrow segment of the user’s financial circumstances, rather than a full picture of their financial situation which the DOL Fiduciary Rule requires. Any standard set forth by the SEC should acknowledge that a tailored, limited set of questions may be entirely appropriate in the fiduciary context, and in so doing should avoid any requirement that would impose longer more formalistic questionnaires as the only manner in which to satisfy its standard of care.

Moreover, most robo-advisers are selectively affiliated with specific companies (*e.g.*, with broker-dealers for trade execution), and these robo-adviser programs will often advertise these firms’ products and services. This raises the question among some regulators of whether robo-advisers can offer unbiased, individualized investment or financial advice or whether there are biases built into them that preclude it. Again, any standard set forth by the SEC should allow for these affiliations, with appropriate disclosure to investors.

***Is there a trend in the provision of retail investment advice toward a fee-based advisory model and away from a commission-based brokerage model? To what extent has any observed trend been driven by retail investor demand, dependability of fee-based income streams, regulations, or other factors? To what extent is any observed trend expected to continue, and what factors are expected to drive the trend in the future? How has any observed trend impacted the availability, quality, or cost of investment advice, as well as the availability, quality, or cost of other investment products and services, for retail investors? Does any such trend raise new risks for retail investors? If so, how should these risks affect the Commission's consideration of potential future action?***

USAA has deep reservations about any standard of conduct that serves to advantage fee-based accounts and serves to disadvantage other types of accounts and product choices. Put simply, a fee-based model may not always be appropriate for lower-balanced accounts. In many cases, these accounts will be better served by straight-forward investments in mutual funds or exchange-traded funds, without such accounts being assessed an ongoing management fee. As Chairman Clayton stated recently, an effective

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<sup>6</sup> The SEC defines robo-advisers as advisers which “use innovative technologies to provide discretionary asset management services to their clients[] through online algorithmic-based programs.” See SEC, IM Guidance Update: Robo-Advisers, No. 2017-02 (Feb. 2017), *available at* <https://www.sec.gov/investment/im-guidance-2017-02.pdf>.

standard of conduct must “not result in Main Street investors being deprived of affordable investment advice or products.”<sup>7</sup> USAA currently offers members the choice of fee-based ongoing advice or one-time advice with no advisory fee, both of which provide for advice related to our proprietary funds. These funds are available at a comparatively low cost to many similar third-party funds, and we offer some of these funds to our members at a lower minimum account balance than is generally available at other mutual fund companies (*e.g.*, members may invest in one of our USAA Cornerstone Funds with either a \$500 initial investment or a \$50 initial investment with a \$50 monthly contribution).<sup>8</sup> It would be a disservice to our members if these critical investment choices were taken away from them.

***As of the applicability date of the Fiduciary Rule, there will be different standards of conduct for accounts subject to the Department of Labor's rule and those that are not, as well as existing differences between standards of conduct applicable to broker-dealers and those applicable to investment advisers when providing investment advice. What are the benefits and costs of having multiple standards of conduct?***

Put simply, USAA sees no actual benefit in having the existing multiple standards of conduct for different accounts and strongly believes that retail investors will be best served and protected by a single standard of conduct that would apply across all investment account types. Imposition of different standards based on account type will lead to different levels of advice for each type of account with the result that investors with different account types will be confused more than helped. The multiple standards that currently exist will cause irreparable harm to the financial advice industry and will serve to cause many firms to cease providing advisory services to retail investors with small balance accounts. Many firms have indicated that multiple standards of conduct will require them to restrict service models and product offerings or make adjustments to compensation arrangements. All of these changes will inevitably affect the way in which USAA and other firms will be able to meet retail investors' needs, which will unnecessarily strain relationships between retail investors and their advisors. Financial services firms, and most importantly retail investors, will best be served by the SEC advancing of a rational and workable uniform standard that applies to all retail accounts.

By way of example of the compliance costs, a broker-dealer selling a mutual fund to a retirement account retail investor who is a resident in Nevada would need to comply with the following regulatory obligations in connection with such a sale:

<b>Rule or Regulation</b>	<b>Regulatory Obligations Include</b>
FINRA Rule 2111 (Suitability)	✓ Customer questionnaire ✓ Written supervisory procedures ✓ Suitability standard of care

<sup>7</sup> Clayton Remarks at the Economic Club *supra* note 4.

<sup>8</sup> See *e.g.*, USAA Cornerstone Moderate Fund (USBSX) at [https://www.usaa.com/inet/imco\\_mutualfund/ImFundFacts?action=INIT&fundNumber=0047](https://www.usaa.com/inet/imco_mutualfund/ImFundFacts?action=INIT&fundNumber=0047).

Rule or Regulation	Regulatory Obligations Include
DOL Fiduciary Rule & Best Interest Contract Exemption (upon the Rule’s effectiveness)	<ul style="list-style-type: none"> <li>✓ Customer questionnaire</li> <li>✓ Written supervisory procedures</li> <li>✓ Fiduciary standard of care</li> <li>✓ Disclosure delivery</li> <li>✓ Entry into Best Interest Contract with retirement investor</li> </ul>
Nevada Financial Planner Statute (NRS 628A)	<ul style="list-style-type: none"> <li>✓ Customer questionnaire</li> <li>✓ Fiduciary standard of care</li> <li>✓ Disclosure delivery</li> <li>✓ Duty to monitor recommendations</li> </ul>
Investment Advisers Act of 1940 (If the mutual fund recommendation is made by a dual registrant acting in its capacity as an SEC-registered investment adviser)	<ul style="list-style-type: none"> <li>✓ Client questionnaire</li> <li>✓ Compliance policies and procedures</li> <li>✓ Written supervisory procedures</li> <li>✓ Fiduciary standard of care</li> <li>✓ Disclosure delivery</li> <li>✓ Duty to monitor recommendations</li> </ul>

The example above highlights the compliance burden for brokerage firms serving retail investors who are saving for retirement. Another pointed example of unnecessary compliance burdens relates to the customer “intake” process related to investors with a limited amount to invest. The current framework calls for an extensive process for identifying the investor’s risk objectives, time horizon, and much more. As we note above, in connection with our discussion of automated advice, in practice, a more streamlined process would better serve investors and result in important efficiencies. Indeed, the regulatory obligations noted in the chart above each have specific, often different, requirements to customer or client “intake” — causing confusion and ultimately not serving investor protection interests.

***Are there particular segments of the market (e.g., smaller and regional broker-dealers and investment advisers, or smaller investor accounts) to which the Commission should pay particular attention in considering potential future actions?***

We believe that the SEC should pay particular attention to firms such as USAA that strive to provide advice and services to individuals of varied financial sophistication, including many of modest means. It is critical that a uniform standard does not impose excessive legal and compliance burdens on such firms, which would effectively incent firms to curtail or even close services to these investors.

A standard that effectively bans or incents firms to abandon certain business models will harm retail investors, especially our men and women in uniform, by raising their costs, reducing their choices, and restricting their access to needed investment advice.

In providing any principles-based standard of care that contains specific allowances or accommodations for the provision of advice to retail investors with low balances who seek certain simple investment advice, an acknowledged outcome should be the efficient provision of advice to investors, without overly complex investor questionnaires or

formulistic disclosures. In practice, many investors may be more harmed than helped by an inundation of such disclosures. Accordingly, the SEC should consider the appropriateness of, and accompanying benefits from, a streamlined approach for retail investors with a low amount to invest, a basic financial profile, and/or limited or no investment experience. Providing this segment of retail investors with fiduciary level, easily accessible, and low-to-no-cost advice is important to USAA and addresses the SEC's traditional notion of protecting the retail investor, as well as DOL concerns which prompted the DOL Fiduciary Rule.

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We appreciate the Commission's consideration of our comments, and we look forward to actively participating in the ongoing industry discussion. Should you have any questions or wish further clarification or discussion of our points, please contact Dan Mavico, USAA Financial Advice and Solution Group Divisional General Counsel, at [REDACTED].

Sincerely,



Deneen L. Donnley  
Executive Vice President  
Chief Legal Officer & Corporate Secretary

cc: The Honorable Michael S. Piwowar, Commissioner  
The Honorable Kara M. Stein, Commissioner