July 20, 2017

Office of Exemption Determinations
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Fiduciary Rule – Request for Extension of Transition Period (RIN 1210-AB82)

Dear Sir or Madam:

In the Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (RFI) published on July 6, 2017, the Department of Labor (DOL) requested public input regarding the advisability of extending the January 1, 2018 applicability date of certain provisions in the Best Interest Contract Exemption (BIC).

For the reasons discussed below, we would request that DOL promptly issue guidance extending the transition period while DOL undertakes the review of the Fiduciary Rule required by the February 3rd Presidential Memorandum. An immediate extension is necessary to avoid confusion and harm to retirement investors and subjecting the retirement industry to unnecessary expense and disruption. Retirement investors will be sufficiently protected by the impartial conduct conditions of the BIC in effect during the current transition period.

Empower Retirement is the second-largest retirement services provider in the U.S., with more than 8 million people in the plans we serve. Empower Retirement has provided comments when DOL re-proposed regulations governing the Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Advice and related proposed Prohibited Transaction Exemptions. Empower Retirement also provided testimony at the August 10 – 13, 2015 public hearings regarding the proposed regulations.

We and other service providers are currently expending significant resources to implement the provisions of the BIC that are currently scheduled to take effect on January 1, 2018. Those include significant new disclosure and recordkeeping requirements, training of staff and communications to clients, participants and business partners. This process requires the development, testing and implementation of new information technology systems and establishment of new operational processes and procedures.

8515 E. Orchard Road
Greenwood Village, CO 80111
empower-retirement.com

It is possible, if not likely, that DOL's review of the Fiduciary Rule and related exemptions will result in material changes. That is particularly true given the fact that DOL has signaled an intention to coordinate with the Securities and Exchange Commission (SEC), which is also requesting information related to the development of a fiduciary standard. As noted, significant expenses and resources are being devoted to the implementation of provisions that may be dramatically changed.

It is also imperative that DOL expedite the process of issuing an extension. In the absence of notification of an extension, the regulated community must operate under the assumption that the January 1, 2018 applicability date remains effective. During this period of uncertainty the resources discussed above will continue to be focused on implementing provisions that may change. Without knowledge of what the changes may be, time is being wasted and needless expenses are being incurred. In addition, there is a significant lost opportunity cost given that those resources could have been allocated to other efforts that could improve plan sponsor and participant service offerings.

An expeditious extension notice is also needed to avoid unnecessary confusion and disruption to plan sponsors, plan participants and the retirement industry. Notice of the 60 day delay of the April 10, 2017 applicability date for the Fiduciary Rule was not communicated until April 5, 2017, with publication in the Federal Register on April 7, 2017. This resulted in significant uncertainty and disruption as the regulated community was again forced to operate under the assumption that the rule would be effective on the original date. It also made it very difficult to effectively communicate what changes sponsors and their participants might experience on April 10th.

In light of the foregoing, we would make the following recommendations:

- DOL should issue an Interim Final Rule that extends the current Transition Period relief and conditions, as articulated in 82 F.R. 16902- 16918 until January 1, 2019. It is critically important that DOL issue such a rule as soon as possible, preferably by August 1, 2017 and no later than August 31, 2017. As noted above, this is needed to prevent unnecessary implementation costs. As the year progresses the resources committed to implementation will increase dramatically and the ability to effectively reallocate those resources will diminish.

- DOL should publicly commit to providing no less than a 12 month notice as to what the final conditions of the existing and any newly proposed exemptions will be before such conditions take effect. This will permit service providers to conserve resources while the DOL performs its review and to efficiently implement compliance structures once the final conditions are known.

- Should DOL and SEC coordinate their efforts to arrive at uniform standards of conduct both DOL and SEC should publically commit to providing no less than a 12 month notice of the new standards prior to their effective date. Once again, this will permit service providers to conserve resources and to efficiently implement compliance structures.

- The DOL should extend the non-enforcement relief under FAB 2017-02 for the same period of time that the transition period is extended.

We believe that the transition period rules are sufficiently protective of retirement investors. As DOL noted in the April 7, 2017 60-day delay of the Fiduciary Rule's applicability date and concurrent reduction in conditions for the transition period, retirement consumers already achieve the vast majority of the predicted monetary benefits of the Fiduciary Rule through the application of the Impartial Conduct Standards, including the imposition of the best interest standard. Such protections can continue even if the Transition Period is extended without much, if any, additional cost to the consumers.

Finally we would respectfully request that DOL extend the information collection period for the remaining requests in the RFI beyond August 7, 2017. The RFI raises a considerable number of issues, and it will take time for recordkeepers and other stakeholders to provide thoughtful and helpful responses. Thirty (30) days is an insufficient amount of time, particularly given the challenges with trying to prepare to comply with the BIC after the transition period.

We appreciate DOL's consideration of this important matter, and we intend to provide additional comments on other issues raised by the RFI. We look forward to working with DOL to complete its review of the Fiduciary Rule and related exemptions.

Sincerely,

Edmund F. Murphy III

Edmund F. Murphy, III | President
Empower Retirement

8515 E. Orchard Road, 3T2, Greenwood Village, CO 80111
www.empower-retirement.com