UNIVERSITY OF MIAMI
SCHOOL of LAW

Investor Rights Clinic
1311 Miller Drive, Suite A312
Coral Gables, FL 33146

Phone: 305-284-8234
Fax: 305-284-9368

April 17, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

RE: Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Advice; Best Interest Contract Exemption; Etc. (RIN 1210-AB79)

Dear Sir or Madam:

The University of Miami School of Law Investor Rights Clinic ("the IRC")[1] appreciates the opportunity to comment on the Department of Labor's (the "Department's") examination of the new definition of "fiduciary" under the Employee Retirement Security Act and the Internal Revenue Code of 1986, and the applicability of related exemptions including the Best Interest Contract Exemption and amended prohibited transaction exemptions (collectively "the fiduciary rule and PTEs").[2] For over five years, the IRC has assisted investors (primarily seniors) who have suffered staggering financial losses in their retirement accounts as a direct result of conflicted advice. We urge the Department to implement the fiduciary rule and related exemptions without modification or further delay.

The IRC's typical client is a retired individual whose life savings was turned over to, and invested in, securities recommended by their broker. We have found that these claims quite often involve securities the broker recommended because they paid huge fees and commissions to the broker. The IRC has pursued dozens of such claims, which have the recurrent theme that the broker has a fundamental conflict of interest in making a recommendation. Specifically, in nearly every case the IRC has handled, the broker has made an investment recommendation that was in the broker's financial best interest, and not in the customer's best interest. In many of those cases, the products were not only more expensive to own (directly impacting any potential returns), but the securities underperformed less expensive alternatives and posed substantially greater risks. We have found that our clients did not understand, and were never told by their

[1] Launched in 2012, the IRC provides *pro bono* representation to investors of modest means who have suffered investment losses as a result of broker misconduct but, due to the size of the their claims, cannot find legal representation. The IRC is the only organization in Florida available to these investors to assert their rights. To date, the IRC has recovered over $900,000 on behalf of investors.

[2] The final fiduciary rule and PTEs were published in the Federal Register on April 8, 2016, 81 Fed. Reg. 20945, and became effective on June 7, 2016. The Department has delayed the applicability of the fiduciary rule for 60 days, until June 9, 2017.

brokers, that the brokers had no duty to put the customer's financial interests ahead of those of the broker.

Just this week we interviewed one of the IRC's newest clients, a retired couple in their 70s who were enticed to switch their IRAs to a new firm after hearing a "senior specialist" at a seminar in their community center. Their new broker immediately sold all their prior holdings in well-diversified mutual funds and placed nearly 70% of their entire savings in five non-traded REITs and business development companies. In a few months they incurred significant losses and, because these investments are illiquid, cannot sell. The broker earned commissions between 7-10% for each of these investments.

Stories like these abound. Indeed, over the course of six years, the Department conducted an extensive review of, among other things, the costs of conflicted advice. The Department concluded that the substantial gains for investors far outweighed the costs of compliance. As the Department already found, aside from the substantial initial costs to comply with the rule – which many broker-dealers have already incurred – the most significant ongoing cost to firms with commission-driven business models is to their profit margins. This interest should not outweigh those of small retail investors who increasingly must bear the financial responsibility for their own retirements.

The IRC has strongly supported the Department's past efforts to protect investors by promulgating the fiduciary rule and PTEs after eight years of study, extensive input from all affected parties, and careful and thoughtful modifications and amendments to the 2010 and 2015 proposed rules. Further, delay or elimination of the fiduciary rule and PTEs would risk inflicting continuing harm on the millions of investors with modest retirement savings who, like our clients, seek advice from brokers assuming that the advice is in their best interests, and as a result suffer devastating financial injury.

The IRC urges that the Department not delay the implementation dates of the fiduciary rule and PTEs. We thank you for the opportunity to comment on this proposal.

Respectfully submitted,

Teresa J. Verges
Director, Investor Rights Clinic