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U.S. Department of Labor
200 Constitution Avenue NW.
Suite 400
Washington, DC 20210

Subject: Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (RIN 1210-AB82, Docket ID Number: EBSA-2017-0004)

Dear Sir or Madam,

We thank you for the opportunity to respond to the Department of Labor Request for Information regarding the Fiduciary Rule and Prohibited Transaction Exemptions (“RFI”).

Alight Solutions, formerly a part of Aon Hewitt, is the leading provider of benefits administration and cloud-based HR and financial solutions. Our 2,800 Wealth-aligned colleagues administer defined contribution and defined benefit plans for more than ten million U.S. workers. Our clients offering these employer-sponsored retirement plans are primarily large employers, including a broad range of Fortune 500 companies.

At Alight, we believe that all people and companies who represent themselves as financial advisors should be expected, and required, to act in their clients’ best interests when providing investment advice, particularly if that advice is focused on assets that have benefited from tax-advantaged status. We believe that the intent of the DOL Fiduciary Rule is consistent with this belief.

Americans working to ensure their retirement security face a variety of challenges and unknowns; from the future state of the nation’s Social Security program; to the returns of the capital markets; to the secular change from DB plans where all investment decisions are made by the employer, to DC plans where individuals (not trained market professionals) are required to own every savings and investment decision. The challenges are daunting for the average worker, and the increased disclosure and transparency proposed by the Rule will aid investors to be better informed consumers, allowing them to more effectively protect their hard-earned retirement dollars.

Enacting all elements of the Rule, and under the current timetable, is the best way to ensure Americans are getting the best, un-conflicted advice and are well-positioned to make the most of their savings.

Our comments will focus on questions 3, 5, 13 and 14 of the Department's RFI and reflect the issues that are relevant to large, qualified employer plans.

3.) Do the Rule and PTEs appropriately balance the interests of consumers in receiving broad-based investment advice while protecting them from conflicts of interest? Do they effectively allow Advisers to provide a wide range of products that can meet each investor's particular needs?

Yes, the Rule and PTEs do work to balance the needs of workers in receiving investment advice while protecting them from conflicts of interest.

In Alight's business, the situation we most often see related to such conflicts of interest is when a qualified plan participant leaves his or her job and faces the choice of whether to keep his or her savings in the former employer's plan, roll it into another plan, roll it into an Individual Retirement Account (IRA), or cash out the balance (and thus face tax implications and possible penalties). This decision is faced by millions of people each year, and for many, it is a choice faced multiple times throughout their career.

Before the Rule, advisers helping workers navigate this important decision were not required to provide advice that was in the best interest of workers. The result was that advisors were allowed to steer individuals to choices that may not have been optimal for those individual investors, and that actually benefited the advisor. For example, advisors may seek to convince existing and new clients to move retirement savings from DC plans (where advisors are typically not able to provide service and charge fees) to IRAs with their firms. However, many large DC plans have worked extensively to obtain favorable institutional pricing, which often represents a material cost-advantage over the fee structures experienced by most investors in an IRA. The wrong decision here could easily have a 15 percent impact on the investor's retirement income for the remainder of his or her lifetime.

While the service afforded by a given advisor certainly may be worth the associated costs, individuals need to be provided non-conflicted advice that carefully weighs the pros and cons of any irrevocable change, such as rolling over assets from a DC plan into an IRA.

In this important instance, the Rule and the PTE appropriately support the provision of investment advice while protecting investors from conflicts of interest. This exemption allows advisors to offer any and all products. It requires that advisors' recommendations regarding these products be based on the high and appropriate standard that the recommendations are in the best interests of their clients.

5.) What is the likely impact on Advisers' and firms' compliance incentives if the Department eliminated or substantially altered the contract requirement for IRAs? What should be changed? Does compliance with the Impartial Conduct Standards need to be otherwise incentivized in the absence of the contract requirement and, if so, how?

Alight believes the rules related to compliance incentives are appropriate in their current form and do not represent an undue hardship for firms or advisors. We understand and acknowledge this is a change to the business routines and practices of advisors and their firms. However, the industry experienced somewhat similar changes with the Department's qualified plan fee disclosure regulations for plan sponsors and service providers (29 CFR 2550.408b-2 and 29 CFR 2550.401a-5), which were implemented successfully and have become routine practice for qualified plans. As the DOL intended, these qualified plan regulations have increased the transparency of fees to plan sponsors and greatly enhanced the consistent and full disclosure of critical information to participants. The implementation of the DOL's qualified plan fee disclosure regulations has:

- Increased plan sponsor understanding of the various types of fees and has provided sponsors with greatly improved transparency of fee arrangements with their service providers. According to Alight's biennial *Trends & Experience in Defined Contribution Plans* report, in 2003, well before fee disclosure regulations, just 34 percent of plan sponsors attempted to calculate total plan costs. By 2009, this percentage increased to 84 percent, and has remained relatively consistent since then.¹
- Required consistent and transparent disclosure of all fees a plan participant may incur—including asset-based fees, shareholder/investment-based fees, administrative charges, and/or individual fees.

Without a substantive and clearly written contract requirement, a worker's best interest may easily be at risk. Given the long-term switch from DB to DC retirement programs, workers are now ultimately responsible for investment decisions, despite the fact that relatively few have the training and aptitude to handle these responsibilities on their own. As such, it is imperative that they are provided clear and transparent disclosure, and that all advisors and their firms are held to clear fiduciary standards.

Today, investors in DC plans are afforded clear disclosure and extending these protections to IRA investors will better standardize disclosures for all workers saving for their retirement. According to the Investment Company Institute, while there is approximately \$7.3 trillion of total assets held in DC plans, there is \$8.2 trillion invested in IRAs.² Despite the difference in overall assets of these two groups, DC plans are required to provide individuals with consistent, easy to understand disclosures and plan sponsors are required, under ERISA, to serve as fiduciaries acting in the best interests of plan participants. While all investors, including those in IRAs, are provided a variety of disclosures, the average investor would benefit from receiving disclosures in a consistent format. Without such

¹ Alight Solutions, *2015 Trends & Experience in Defined Contribution Plans* (Lincolnshire, IL: Alight Solutions, 2015).

² ICI, Investment Company Institute, Q1 2017 Total U.S. Retirement Assets.
https://www.ici.org/research/stats/retirement/ret_17_q1

information, making informed choices around important decisions such as whether to retain assets within a DC plan or roll them over into an IRA, is needlessly complicated.

In the Model Comparative Chart provided in conjunction with 29 CFR 2550-404a-5, the Department included the following statement: “The cumulative effect of fees and expenses can substantially reduce the growth of your retirement savings.” This is an important message for all investors. For example, decreasing fees by 25 basis point per year (0.25 percent) can be equivalent to saving 0.75 percent more each year for a worker over the course of a 40-year career.³ Viewed from a different perspective, given that the average DC investor that Alight serves saved 7.7 percent in 2016, a 25 basis point reduction in fees would equate to an approximate 10 percent increase in the average plan participant’s savings rate.⁴ Alight strongly agrees fees have a substantial impact on retirement savings, whether the savings occur in qualified plans or IRAs.

Similar to the qualified plan market, consistent and enforceable standards to provide advice that is specifically in the best interest of the investor as well as the fully transparent disclosure of advisors’ compensation and possible conflicts of interest is critical—and long overdue. IRAs do not represent a minor element within our economy; rather they are the single largest component of retirement savings, outside of the Social Security program.⁵ The elimination or substantial alteration of the contract requirement for IRAs is not in the best interest of investors.

13.) Are there ways to simplify the BIC Exemption disclosures or to focus the investor’s attention on a few key issues, subject to more complete disclosure upon request? For example, would it be helpful for the Department to develop a simple up-front model disclosure that alerts the retirement investor to the fiduciary nature of the relationship, compensation structure, and potential sources of conflicts of interest, and invites the investor to obtain additional information from a designated source at the firm? The Department would welcome the submission of any model disclosures that could serve this purpose.

A simplified model disclosure with a more complete disclosure upon request would help investors be better consumers. Enhancing investors’ ability to make effective decisions regarding their retirement savings is a crucial objective given the broad move away from DB plans, where seasoned professionals make all investment decisions, to DC plans, where each individual is responsible for his or her own savings and investment decisions.

³ Alight Solutions, *Aon Hewitt Encourages Defined Contribution Plan Sponsors to Reevaluate How Workers Pay Fees* (Lincolnshire, IL.: Alight Solutions, June 2014).

⁴ Alight Solutions, *2017 Universe Benchmarks* (Lincolnshire, IL.: Alight Solutions, 2017).

⁵ ICI, Investment Company Institute, Q1 2017 Total U.S. Retirement Assets.
https://www.ici.org/research/stats/retirement/ret_17_q1

Focusing on the three key areas noted in the question: fiduciary status; compensation and fees; and conflicts of interest, will support improved clarity. For consumers, this will:

- Provide clear and consistent information that is critical for workers' long-term savings, particularly when it comes to the decision between rolling assets out of a qualified plan or leaving the assets in the plan, as described in our response to question three.
- Provide pertinent information in a consistent, easy-to-understand format for individuals saving for their retirement, particularly given that the vast majority of them are not professionally trained investors. This will facilitate effective comparisons of services and fees between advisors/firms and between IRAs and qualified plans for all investors.

Additionally, allowing investors the option of requesting more detailed information upon request is a prudent approach that will help streamline the entire process.

Today, approximately two-thirds of all traditional IRA accounts opened each year are based on IRA rollovers.⁶ Further, DC investors receive a 404a-5 disclosure annually, which provides consumers with clear information regarding investments and fees associated with their DC accounts. Ensuring similar transparent disclosures for retirement savings held in IRA accounts is appropriate, given that most new IRAs are the result of DC assets being rolled into a new IRA, and given the magnitude of assets held within IRAs.

The issue of potentially inappropriate steering of investor assets held in DC plans into IRAs is well-known in the industry and was documented thoroughly by the GAO. Their analysis found that the current rollover process favors distributions to IRAs for several reasons including pervasive marketing of IRAs, without any consideration of the investor's specific financial needs. To that point, the GAO's published report noted:

“Plan participants are often subject to biased information and aggressive marketing of IRAs when seeking assistance and information regarding what to do with their 401(k) plan savings when they separate or have separated from employment with a plan sponsor.”⁷

Alight is an independent DC plan recordkeeper and does not steer participants into any rollover product. On behalf of our clients, we analyzed where assets go when workers roll assets out of the plan to an IRA provider. As these are ERISA plans, our clients are interested in monitoring the activities associated with the plan to ensure they are consistent with ERISA standards. Our analysis shows that the most successful IRA provider gathered, on average, approximately 16 percent of rollover assets.⁸ Benchmarking the destination percentages is important, because if any providers are receiving more than a reasonable percentage of rollovers, it could very well be considered steering and not necessarily be in the best interest of the investors.

⁶ ICI, Investment Company Institute, [The IRA Investor Profile: Traditional IRA Investors' Activity, 2017—2015](#), June 2017.

⁷ GAO, U.S. Governmental Accountability Office, *401(k) Plans, Labor and IRS Could Improve the Rollover Process for Participants*, March 2013.

⁸ Alight Solutions, *Benchmarking 401(k) Rollover Behavior* (Lincolnshire, IL: Alight Solutions, 2017).

Given the vast amount of assets eligible for IRA rollover, a high level of marketing to investors is to be expected. But just as plan sponsors should monitor their plans to ensure no inappropriate steerage towards a given provider may be occurring, disclosures provided to investors must be consistent and transparent to help consumers navigate the various marketing messages they will inevitably encounter. Simply put—increased and insightful disclosure to prospective IRA investors would allow workers to make more informed choices regarding their retirement savings.

14.) Should recommendations to make or increase contributions to a plan or IRA be expressly excluded from the definition of investment advice? Should there be an amendment to the Rule or streamlined exemption devoted to communications regarding contributions? If so, what conditions should apply to such an amendment or exemption?

The DOL issued Conflict of Interest FAQs in early August 2017 (408b-2 Disclosure Transition Period, Recommendation to Increase Contributions and Plan Participation), which provided additional clarity on the issue of savings recommendations. In the FAQ, the DOL indicated that recommending or suggesting a contribution increase to a plan participant or IRA owner is not fiduciary investment advice, provided the communication is silent with respect to specific investment choices. This applies regardless of whether the contribution suggestions are provided by plan sponsor, plan service provider, or advisor/financial institution.

The Department has been clear through the Rule and recent FAQs about how contribution communications can be delivered while not constituting fiduciary investment advice. Alight supports this position as it is key to helping ensure workers receive these crucial contribution communications and education.

Conclusion:

As American workers are required to take greater responsibility for their retirement savings and investing decisions, saving has become increasingly challenging and complex. Turning to professional advice is an important way for workers to wade through the variety of decisions they face, but they shouldn't have to worry that the advice they receive is not in their best interest or is potentially conflicted. The Fiduciary Rule goes a long way in providing needed reassurance and security. Enacting the Rule, in its current form and under the current timetable, is the best way to ensure the retirement savings of American workers is more carefully safeguarded.

We thank the Department for the opportunity to provide our insight, data and perspective on this important issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Borland".

Alison Borland, EVP Defined Contribution Solutions, Alight Solutions

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