September 5, 2017

Filed Electronically

Office of Exemption Determinations
Employee Benefits Security Administration
Attn: Definition of the Term "Fiduciary" – Proposed Eighteen Month Extension of the Transition Period
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Proposed Eighteen Month Extension of the Transition Period and Applicability Dates for the Best Interest Contract Exemption ("PTE 2016-01"), Class Exemption for Principal Transactions ("PTE 2016-02"), and Prohibited Transaction Class Exemption 84-24 ("PTE 84-24")
RIN 1210-AB82

Dear Deputy Assistant Secretary Hauser:

Tucker Advisors strongly supports the Department of Labor's ("Department") proposal to extend the applicability date for certain provisions of PTE 2016-01; PTE 2016-02; and the 2016 amendments to PTE 84-24 by eighteen months, from January 1, 2018 until July 1, 2019 (the "Proposed Extension").[1] The Department issued PTE 2016-01, PTE 2016-02, and the 2016 amendments to PTE 84-24, alongside the regulation, "Definition of the Term 'Fiduciary'; Conflict of Interest Rule--Retirement Investment Advice", 81 Fed. Reg. 20946 (April 8, 2016) and the 2016 amendments to Prohibited Transaction Class Exemptions 75-1, 77-4, 80-83, 83-1, and 86-128, (together, the "Fiduciary Rule"). For the following reasons, we believe the Department should finalize the Proposed Extension promptly and without alterations.

The Department has indicated that the review required by the President's Memorandum on the Fiduciary Rule (82. Fed. Reg. 9675 (Feb. 7, 2017)) is ongoing, and that as a result of this review, the Department may rescind or revise the Fiduciary Rule. In connection with the Department's efforts, it has received in excess of 260,000 comments from interested parties. We are supportive of the Department's mission of conducting a thoughtful review of the Fiduciary Rule and its "efforts to reduce costs and increase benefits to all affected parties." The Proposed Extension should be finalized as it is consistent with this mission. Unless the Proposed Extension is granted, Tucker Advisors will be forced to incur costs that will not result in offsetting retirement investor savings. For example, we will be required to create a complex website disclosure and other disclosures that both may ultimately be scrapped if the Department makes changes and also will result in costs that will ultimately be borne by the consumers the Department has sought to protect.

---

[1] 82 Fed. Reg. 41365 (Aug. 31, 2017).

From a quantitative and qualitative standpoint, the Proposed Extension makes sense. In the absence of a sufficient delay, financial service providers will be required to make material changes to their product and retirement plan offerings only to have to undo or modify those changes if the Fiduciary Rule is later rescinded or amended. That will lead to confusion among consumers and additional costs, which will inevitably be borne by retirement savers. From a quantitative standpoint, even without taking into account the likely savings that will result from changes to the byzantine disclosures required by the current Fiduciary Rule, we agree that there will be substantial cost savings to the financial services industry without burdening consumers. While we reject the Department's 2016 Regulatory Impact Analysis, we recognize that the Department believes that all of the consumer savings are generated by the Impartial Conduct Standards – standards which already are and would remain in effect during the eighteen-month period. We agree with the Department's conclusion that the financial services industry will realize substantial savings during the eighteen-month period as we and others are able to devote time, money, and other resources that would otherwise be spent complying with the myriad of compliance requirements will be instead devoted to productive uses.

Because the Department has indicated that it believes it can complete its review and have a new rule, if necessary, finalized prior to July 1, 2019, we support the Department's Proposed Extension. Should the Department determine that additional time is necessary to complete its review or should the Department ultimately propose changes, the Department can, at that time, propose an additional extension to provide plan service providers sufficient time to build out the systems necessary to comply with such changes. While a longer extension or an extension tied to completion of the Department's review may offer some additional benefit, it is more important that the Proposed Extension be finalized and that additional cost-benefit analysis be avoided.

Finally, with the current transition period expiring in a mere four months, it is unrealistic to ask service providers to comply with additional conditions during the eighteen-month extension. In fact, to avoid disruption in the market, the Department should not only refrain from adding new conditions but should simultaneously announce that the non-enforcement policy announced in FAB 2017-02 will be extended during the eighteen-month extension.

We urge the Department to finalize the Proposed Extension in its current form. We further request the Department extend the application of FAB 2017-02 to ensure that the industry is not forced to expend resources on compliance efforts that prove unnecessary because of subsequent changes to the Fiduciary Rule and to ensure that retirement savers do not lose additional access to vital advice.

Sincerely,

Karlan Tucker
CEO, Tucker Advisors