Ann M. Kappler
Senior Vice President, Deputy General Counsel
and Head of External Affairs

Prudential Financial, Inc.
751 Broad Street, 21st Floor
Newark NJ 07102
Tel 973 802-9133 Fax 973 802-5315
ann.kappler@prudential.com

September 14, 2017

Submitted by Email:
EBSA.FiduciaryRuleExamination@dol.gov

U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, D.C. 20210

Re: EBSA RIN 1210-ZA27
Extension of Transition Period and Delay of Applicability Dates – PTEs 2016-01, 2016-02, 84-24

Ladies and Gentlemen:

Prudential Financial, Inc. ("Prudential") appreciates the opportunity to comment on the U.S. Department of Labor's (the "Department") proposal to extend from January 1, 2018 to July 1, 2019 the transition period and applicability dates for the Best Interest Contract Exemption, the Class Exemption for Principal Transactions and Prohibited Transaction Exemption 84-24.[1]

Established in 1875, Prudential has a long history of helping Americans achieve a more secure financial future. We, therefore, appreciate and support regulation that protects the interests of consumers while ensuring they continue to have access to the quality products and services they need for a secure retirement. However, as we have noted in earlier letters to the Department[2], our compliance efforts to date have underscored for us, and we believe the financial services industry generally, the complexity of the 2016 fiduciary rule and related prohibited transaction exemptions ("the Rule")[3], the need for significant and meaningful revisions to the Rule, and the

---

[1] 82 Fed. Reg. 41365, August 31, 2017.
[2] See letters from Prudential dated August 7, 2017, at https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB82/00519.pdf and July 20, 2017, at https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB82/00196.pdf.
[3] See 81 Fed. Reg. 20946, April 8, 2016

potential for unintended consequences for existing and potential plan participants and beneficiaries, IRA owners and plan fiduciaries if such revisions are not made.

For these reasons, we support the Administration's commitment to a comprehensive review of the Rule and, in conjunction therewith, encourage meaningful coordination of regulatory responsibilities among prudential regulators. In this regard, and taking into account the challenges attendant to the regulatory process generally, we strongly support the Department's proposed delay of the transition period and applicability dates to July 1, 2019.

We believe the proposed extension of the transition period and delay of the applicability dates should be sufficient for the Department to assess and develop needed Rule changes, engage in meaningful coordination with the Securities and Exchange Commission, as well as the states and other prudential regulators, and adopt those changes to the "fiduciary" definition and related exemptions critical to ensuring that existing and potential plan participants and beneficiaries, IRA owners and plan fiduciaries have continued access to the quality products and services on which millions of Americans have come to depend for a secure retirement. Our specific concerns, as well as recommended paths forward, are detailed in our August 7, 2017 letter to the Department.[4]

In connection with the proposed extension and delay, the Department invited comment on alternative approaches, including a delay that ends a specified period after the occurrence of a specific event and a tiered approach where the delay is set for the earlier of or later of a time certain or the end of a specified period after the occurrence of a specific event. Prudential supports the time certain (18-month) approach proposed by the Department because it minimizes confusion on the part of consumers and brings certainty to the financial services industry. From our perspective, the duration of any extension or delay is wholly dependent on the time required by the Department to coordinate with other regulatory entities and adopt the needed regulatory and exemption changes. In this regard, the Department appears to be of the view that 18-months is a workable period within which to accomplish those objectives and we have no reason to question that judgment.

Moreover, we are confident that, in conjunction with proposing changes to the "fiduciary" definition and related prohibited transaction exemptions, the Department will be proposing new effective and applicability dates that take into account the significance of those changes, as well as the need for orderly and cost-effective implementation efforts. In the absence of knowing what specific changes are under

---

[4] See *supra* note 2.

consideration or likely to be adopted, we believe it is difficult to speculate on the appropriateness of any future compliance dates.

In footnote 32, the Department invites public comment on whether the enforcement policy set forth in Field Assistance Bulletin 2017-02 (May 22, 2017) should be extended to July 1, 2019, i.e., the same period of the proposed extension of the Transition Period. Inasmuch as the only change at issue at this juncture is an extension of the Transition Period and delay of applicability dates, we see no policy rationale for not extending the temporary enforcement policy announced in May. Accordingly, Prudential supports extending the temporary enforcement policy to July 1, 2019.

While the Department did not specifically solicit comment, the Department did indicate in the preamble accompanying the proposal that it "anticipates it will propose in the near future a new and more streamlined class exemption built in large part on recent innovations in the financial services industry."[5] In this regard, we wish to reiterate our continued concern about any effort to effectively pick winners and losers through a product-specific streamlined exemption. Such an exemption would, in our view, not only chill on-going innovative efforts in the financial services industry, but establish a troubling precedent for future Administrations.[6] We continue to believe the appropriate Department response to the need for simplified exemptions should be a better, more appropriate "fiduciary" definition and the issuance of a prohibited transaction exemption that takes into account unintended consequences and is applicable generally to investment advice providers.

In conclusion, it is important to note that companies like Prudential who have been actively working to meet the challenging compliance deadlines are at a critical juncture in implementing required changes with respect to regulatory requirements that are in serious need of change. We, therefore, request that the Department act with urgency in adopting the proposed extension of the transition period and applicability date delays.

---

[5] See 82 Fed. Reg. 41371.

[6] In this regard, we note that the prior Administration, in an apparent effort to favor passive investing, invited public comment on a "low-fee streamlined exemption." See 80 Fed. Reg. 21978, April 20, 2015.

We look forward to working with the Department to ensure that all working Americans have access to the products and services they need for a meaningful and secure retirement. Should you have any questions concerning any of the matters discussed herein, please contact Robert J. Doyle, Vice President, External Affairs, at robert.j.doyle@prudential.com or 202.327.5244.

Sincerely yours,

Ann M. Kappler
Senior Vice President and
Deputy General Counsel

Copies to:
Timothy D. Hauser, Deputy Assistant Secretary for Program Operations
Joe Canary, Director of Regulations and Interpretations
Lyssa Hall, Director of Exemption Determinations
Jeffrey Turner, Deputy Director of Regulations and Interpretations
Karen Llyod, Chief, Division of Class Exemptions,
  Office of Exemption Determinations
Nicholas C. Geale, Acting Solicitor