National Leadership for the
Direct Investments Industry

IPA
Investment Program Association

March 16, 2017

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

RE: Definition of the Term "Fiduciary" --- Delay of Applicability Date (RIN 1210-AB79)

Ladies and Gentlemen:

We are writing in support of the United States Department of Labor's (the Department) recent proposal (the Proposal) to delay the applicability date of the rule defining who is a "fiduciary" under the Employee Retirement Income Security Act of 1974 §3(21)(A)(ii) and the associated new and amended prohibited transaction class exemptions, 81 Fed. Reg. 20,945-21,221 (April 8, 2016) (the Fiduciary Rule). Delaying the applicability date of the Fiduciary Rule is necessary and critical to ensuring investors have access to needed advice and investment products. We also urge the Department to consider a further extension of at least 180 days to fully examine the issues raised during the comment period and challenges facing both industry and retail consumers by the Fiduciary Rule.

The Investment Program Association (IPA) applauds the efforts of the Department to provide additional time for the Department and affected parties to sufficiently review the Fiduciary Rule as directed by the President's Memorandum of February 3, 2017. However, sixty days is simply not enough time to properly and completely answer the questions raised in the President's Memorandum and the Proposal. A full and thorough review will require a delay of no less than 180 days in the applicability date of the Fiduciary Rule. We implore the Department to revise the Proposal or to issue an additional delay to provide sufficient time before making permanent changes which impact the retirement security of tens of millions of Americans.

We support individual investor access to a variety of Direct Investment asset classes not correlated to the traded markets and historically available only to institutional investors, including: public non-listed REITs; public non-listed business development companies; energy and equipment leasing programs and real estate private equity offerings. Direct Investment products are held in the accounts of nearly 3 million individual investors. They remain a critical component of an effectively diversified investment portfolio and serve an essential capital formation function for the U.S. economy. The mission of the IPA is advocating Direct Investments through education and public awareness and the promulgation of best practices.

Of the nearly 3 million individual investors who depend on Direct Investment products to meet their financial goals, approximately 45 percent of these products are held in Individual Retirement Accounts.

The Fiduciary Rule directly impacts the ability of financial advisors to offer Direct Investment products to retirement accounts. This would effectively limit choices for retail investors who often select Direct Investment products to diversify their portfolios with non-correlated securities. The Fiduciary Rule also contains vague terms resulting in confusion and uncertainty for financial advisors and a reluctance to offer Direct Investment products to their clients. In addition, the Fiduciary Rule creates new and extensive litigation risks for financial advisors which ultimately will increase the costs borne by investors and reduce their returns.

Furthermore, we question the economic analysis and assumptions underlying the Fiduciary Rule. We are concerned that the reliability of the data is uncertain, and we believe the asserted facts are incomplete. Providing at least an additional 180 days to address the issues raised by the President's Memorandum and the Proposal will provide time for the Department and the financial services industry to address these and other shortcomings in the Fiduciary Rule.

Americans hold close to $25 trillion in retirement assets. This money is held by tens of millions of families with a goal of securing their retirement and achieving their dreams. The preservation and protection of these assets is paramount to the ability of Americans to reach their retirement goals. The Fiduciary Rule is a dramatic change to the U.S. retirement landscape that should first be fully vetted. We strongly support the Proposal and urge the Department to delay the application date of the Fiduciary Rule by a minimum of 60 days. We also urge the Department to consider a further extension of at least 180 days to fully examine the issues raised during the comment period and challenges facing both industry and retail consumers by the Fiduciary Rule.

Sincerely,

Anthony Chereso
President & CEO, Investment Program Association