PenServ
PLAN SERVICES

Northeast Regional Corporate Office
420 Dresher Road Suite 100
Horsham, PA 19044
Phone (215) 444-9812
Fax (215) 444-9813
www.penserv.com

March 17, 2017

Filed Electronically - (EBSA.FiduciaryRuleExamination@dol.gov)

Mr. Joe Canary, Director
Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Fiduciary Rule Examination
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Definition of the Term "Fiduciary" & Related Exemptions – Proposed Delay of Applicability Dates

Dear Mr. Canary:

Support of Delay

PenServ Plan Services, Inc. appreciates the opportunity to comment and strongly supports the Department of Labor's proposal to delay the applicability date of the regulation "Definition of the Term Fiduciary" and related exemptions.

We believe an extension of the applicability date is warranted as explained in detail below. In particular, a delay will give the Department of Labor (the "Department" or "DOL") the time necessary to consider the comments it will receive in conjunction with its examination of the Regulation pursuant to the President's Memorandum to the Secretary of Labor dated February 3, 2017.

About PenServ Plan Services

PenServ Plan Services, Inc. ("PenServ") is a full service retirement plan consulting and compliance firm. In that capacity PenServ currently provides comprehensive retirement services to over 5000 Employers and more than 1200 financial institutions, among others, with IRAs, 403(b), 457, and qualified plans. As part of these services, PenServ acts as the third party administrator for over 2000 employee benefit plans ranging from the smallest plan (1 person) to large plans with several thousand participants. We are independent and as such we do not provide product, but work with many advisory firms who we believe do work in the best interest of their clients.

PenServ is a member of the National Tax-Deferred Savings Association ("NTSA") which is a sister organization of the American Retirement Association ("ARA"). In addition to these comments we support the comments of the ARA letter including the discussion of the delay until January 1. 2018. We will not, therefore, repeat the comments that are contained in that letter, but rather offer some additional information in support of the delay.

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We write this letter on behalf of our financial institution and advisor clients, as well as the participants and employers who will be impacted if a delay is not imminent.

IRA Financial Institutions

During 2012, we became aware that the Internal Revenue Service was in the process of finalizing new proposed IRA regulations updating those products for the first time since 1978. This update will include an update to the financial disclosure rules, currently contained in Treasury regulations 1.408-6. We understand these regulations have been in clearance for over a year.

When the Fiduciary regulation was initially finalized, we contacted the Treasury Department inquiring about a joint effort to ensure there would be coordination between the financial disclosure requirements in the new proposed IRA regulations and the Fiduciary rule. After our first conversation, we understood joint conversations were taking place.

During October of 2016, we again inquired as to whether there would be additional disclosure requirements over and above the Fiduciary rule requirements when the new proposed IRA regulations are issued. Understandably, Treasury has remained silent on the issue.

Additional Cost to Financial Institutions

If the IRA regulations require additional disclosure information, then a mass mailing by each financial institution to all accountholders will be necessary. It seems unlikely that such coordination would be in place prior to the original applicability date of April 10th. This in effect would require multiple mass mailings to IRA participants, a cost prohibitive venture. Most financial Institutions do not charge high annual maintenance fees for their IRA accounts. One mass mailing rather than several could avoid unnecessary fee increases to cover those costs.

In an effort to contain the cost of these updates, most firms have been anticipating (1) the IRA regulations, when issued; (2) the possible delay of the Fiduciary rule, in an effort to coordinate the 2 into one comprehensive mailing to their clients.

Cost and Mayhem to Participants

Unfortunately we believe that there has not been enough time spent on questions and concerns arising from the industry, employers and participants. Both Advisors and Institutions need more time to fully understand the requirements of the Best Interest Contract Exemption (BIC Exemption) and the implementation it in a way that is easily communicated to participants. Without the use of the BIC Exemptions, participants will be left without the ability to rely on their Advisor or Financial Institution for much needed guidance in their retirement planning.

Looking first to the IRA sector of the population, participants will be required to weed through pages of new information that may create confusion regarding the impact on the investments in their accounts.

Second, looking to participants in employer plans, in particular with respect to nonERISA 403(b) plans, where workers of tax-exempt employers often rely on their Advisors for guidance and explanations of regulatory changes. If institutions and advisors are given ample time to implement policies and

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procedures that allow them to use the BIC Exemption, then these participants are left with very limited resources for future guidance.

We feel strongly that there has not been enough time spent on questions and concerns arising from the industry relied upon to assist participants, and addressing the concerns of employers and their participants.

It is important to consider that when participants are taken from their trusted Advisors they have entrusted with their retirement funds for years, statistical data shows they stop savings for retirement altogether. For example in Virginia, the state decided to remove all vendors from their plan and go to a single vendor model with an employer match. The result was that *less than 5% of participants contributed to the new plan – even forgoing the match, because choice was removed along with their Advisors.*

That is an outcome we cannot allow to happen! Additional comments on the structuring of the Fiduciary rule are critical, as are review and comments related to the new proposed IRA regulations. Without it, fewer individuals will be saving anything for retirement, costs to develop a BICE exemption and other materials for participants will double, and additional costs will be passed through to the consumer in order to maintain the compliance of these plans.

In order to act in the best interest of *all parties*, the end result must be in favor of the consumer. To not go forward with a delay is not in the best interest of participants, the individuals that this law is intended to protect.

Thank you for the opportunity to present our views and recommendations. We would be happy to answer any questions or provide additional information.

Sincerely,

Susan D. Diehl

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Susan D. Diehl, QKA, CPC, ERPA
President, PenServ Plan Services, Inc.
420 Dresher Road, Suite 100
Horsham, PA 19044
215-444-9812 X 5041 (Office)
Email Sdiehl@penserv.com