

**Bradford P. Campbell**  
Partner  
bradford.campbell@faegredrinker.com  
202-230-5159 direct

**Faegre Drinker Biddle & Reath LLP**  
1500 K Street, NW, Suite 1100  
Washington, DC 20005  
+1 202 842 8800 main  
+1 202 842 8465 fax

September 7, 2022

The Office of Exemption Determinations  
Employee Benefits Security Administration  
Attention: RIN 1210-AC05, Docket ID Number EBSA-2022-003  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

*Submitted Electronically via Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov)*

**Re: Request to Testify at the September 15, 2022 Public Hearing Regarding RIN 1210-AC05, Proposed Amendment to Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications**

Acting Assistant Secretary Khawar:

I am writing to request to testify at the September 15, 2022 hearing. As required by the hearing notice published in the Federal Register on August 22, I am providing the following information:

1. "The name, title, organization, address, email address, and telephone number of the individual who would testify;"

Bradford P. Campbell  
Partner  
Faegre Drinker Biddle & Reath LLP  
1500 K Street, NW Suite 1100,  
Washington, DC 20005  
[bradford.campbell@faegredrinker.com](mailto:bradford.campbell@faegredrinker.com)  
(202) 230-5159

2. "...if applicable, the name of the organization(s) whose views would be represented;"

I will be testifying on behalf of several clients who are or who have been involved in seeking prohibited transaction exemptions from the Department in recent years.

3. "...the date of the requestor's written comment on the Rule (if applicable); and"

I submitted a written comment letter on May 31, 2022. It is listed as comment #29 on the Department's website located at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AC05>

4. "...a concise summary of the testimony that would be presented."

A robust exemption program is essential to protect the best interests of plan participants and beneficiaries. ERISA cannot function as intended without an active and responsive exemption program. The Proposal would have the practical effect of dramatically curtailing the exemption program to the detriment of participants and beneficiaries.

The Proposal's significant new limitations on the types of exemptions it will consider, and on the types and conduct of service providers who may be involved in the transaction, are not rationally related to the issues the Department states that the Proposal is intended to address. The Department has not demonstrated that it appropriately considered less burdensome alternatives, or considered the effect on small businesses, including service providers.

Specifically, my testimony will address the need to amend the Proposal to:

- Remove restrictions facing applicants based on any investigation by any Federal or state entity for a potential violation of any Federal or state law—This overly broad limitation would severely limit eligible applicants without regard to whether any violation occurred or whether it would be material to evaluating an exemption request.
- Remove language disavowing all precedent—While the Department may make policy changes prospectively, it cannot treat similarly situated applicants differently. The Department also cannot ignore the existence of PTE 96-62 ("EXPRO"), an existing class exemption based primarily on precedent.
- Remove elimination of anonymous discussions—the Department has no reasonable basis to refuse to engage in discussion of a potential prohibited transaction issue and exemption with an anonymous entity. In my experience, such discussions are in the best interest of participants and the Department itself.
- Remove limitations on experienced independent fiduciaries and other service providers—the Proposal asserts that independent fiduciaries and others may be conflicted simply because they regularly provide their services in connection with similar transactions. Not only is that an arbitrary determination by the Department (how much experience causes one entity to be conflicted but not another?), but it reverses fiduciary norms (encouraging engagement of less experienced fiduciaries does not safeguard participants' interests).

Congress provided the authority for the Department to issue exemptions precisely because the prohibited transaction rules are so broad, and it intended the Department to use this authority. Unfortunately, the Proposal would do the opposite, severely restricting the availability of exemptions.

Thank you for the opportunity to request to testify at this important hearing.

Sincerely,



Bradford P. Campbell