December 6, 2023

Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

RE: RIN 1210-AC02 – Definition of Fiduciary
Application No. D-12057 – Proposed Amendment to PTE 2020-02
Application No. D-12060 – Proposed Amendment to PTE 84-24
Application No. D-12094 – Proposed Amendments to PTE 75-1, 77-4, 80-83, 83-1, 86-128

Dear Sir or Madam:

I write on behalf of the Hispanic Leadership Fund (HLF), a non-partisan advocacy organization dedicated to strengthening working families by advancing common-sense public policy solutions that foster liberty, opportunity, and prosperity. I am contacting you to express our staunch opposition to the Department of Labor's proposed new definition of a fiduciary and the Department of Labor's proposed amendments to related prohibited transaction exemptions.

DOL's proposal poses a threat to the ability of many Americans, especially those in underserved communities, to effectively save for their retirement.

The proposed amendments are effectively the same (or in some cases worse) than the Department's final 2016 Fiduciary Rule, which was rightly struck down in 2018 by the U.S. Court of Appeals for the Fifth Circuit. HLF commissioned an in-depth analysis of this rule, and the resulting report demonstrated not just the damage done to ordinary Americans' financial well-being during the rule's short existence, but also showed the damage that could be caused by reestablishing this approach. For example, our study showed that reinstating the Fiduciary Rule, as the proposal would do, could reduce the retirement savings of 2.7 million individuals with incomes below $100,000 by $140 billion over ten years.

HLF's research also showed that following the path of DOL's 2016 Fiduciary Rule would contribute to a roughly 20% increase in the wealth gap for Black and Hispanic Americans—and that only considers accumulated IRA savings.

The reality is that commission-based financial professionals play a vital role in serving clients with low- to middle-incomes, providing access to safer and more stable financial products. Saddling these individuals with byzantine regulations will not have the intended effect of helping the consumer.

We note that DOL made a very weak attempt to refute our in-depth study (emphasis added):

> *In 2021, the Hispanic Leadership Fund and Quantria prepared a paper on the effects of reinstatement of the 2016 Rule. Based on the same approach as Quantria's prior paper, they estimated that reinstatement of the rule would reduce retirement savings of individuals with incomes below $100,000 by $140 billion over 10 years.* **The 2021 findings have shortcomings similar to those identified in the 2014 analysis, such as assuming such policy action would eliminate all financial advice received by these individuals or purporting causation from correlation.** *Padmanabhan, Panis, and Tardiff (2016) point out that several of the paper's key assertions, such as many advisers will not be willing to operate under the fiduciary standard set out by the Department's rule, do not have empirical support and are not consistent with current practices.* **Furthermore, the paper's findings are not applicable to the current proposal because it assumes reinstatement of the 2016 Rulemaking, which was markedly different than the current proposal.** *For instance, the 2016 Final Rule required fiduciary advisers to enter into a written contract with a plan or IRA investor, which is not included in this proposal.*

DOL's rebuttal cannot withstand even basic scrutiny. DOL questions whether individuals actually lost access to investment assistance due to the 2016 rule, but in doing so, DOL's sole reference is a paper published before the 2016 rule was issued. DOL's complete inability to deny the actual investment assistance that was lost renders their rejection of HLF's conclusions meaningless.

Similarly, DOL's assertions that the 2023 proposal is different from the 2016 proposal lack any merit. The 2023 proposal turns salespeople into fiduciaries, just like the 2016 rule. The 2023 proposal eliminates the same three parts of the current five-part test for fiduciary status as the 2016 rule did. DOL itself cannot even identify any difference in the definition of a fiduciary between 2016 and 2023. In an attempt to claim a difference, DOL resorts to referencing one discrete aspect of the prohibited transaction exemptions, a contract requirement. DOL is correct that there is no contract requirement in the 2023 proposal, but the exemptions are otherwise very similar or worse than the 2016 rule. And in fact, the 2023 requirement to acknowledge fiduciary status has an effect very similar to the contract in creating state law rights to sue.

Having faced the challenges of building a solid financial future firsthand, I understand the importance of creating an environment that facilitates retirement savings for all. It is disturbing to witness potential government rules that will hinder this process for millions of others, particularly for individuals in communities with limited access to financial resources and information.

HLF recognizes that consumer protection should indeed be fundamental to any regulatory approach in this area. However, any regulatory structure that in effect cuts off less affluent individuals and families from receiving all possible advice and information is clearly the wrong answer. Instead, all regulators and actors in this space should commit to establishing an environment that simplifies the process of creating and building wealth for working families. It is alarming to know that DOL is contemplating a regulatory regime that will disproportionately affect low- and middle-income families. HLF urgently requests that you consider the harm such a regulatory regime is highly likely to cause and withdraw the current proposal.

Thank you for your consideration and for the opportunity to provide input on this matter.

Sincerely,

Mario H. Lopez
President
Hispanic Leadership Fund