Betterment

January 2, 2024

The Honorable Lisa Gomez
Assistant Secretary
Employee Benefits Security Administration
Department of Labor
200 Constitution Ave, NW
Washington, D.C. 20210

*By electronic submission via* [www.regulations.gov](www.regulations.gov)

**Re: Retirement Security Rule: Definition of an Investment Advice Fiduciary (RIN 1210-AC02, 88 Fed. Reg. 75890) and Proposed Amendment to Prohibited Transaction Exemption 2020-02 (Appl. No. D-12057, 88 Fed. Reg. 75979)**

Dear Assistant Secretary Gomez:

Betterment LLC ("Betterment") appreciates the opportunity to respond to the Department of Labor (the "Department") proposed regulation, "*Retirement Security Rule: Definition of an Investment Advice Fiduciary (Retirement Security Rule)*" (RIN 1210-AC02, 88 Fed. Reg. 75890), as well as the "*Proposed Amendment to Prohibited Transaction Exemption 2020-02 (PTE 2020-02)*" (App. No. D-12057, 88 Fed. Reg. 75979) (collectively, the "Proposal").

Betterment pioneered the use of technology to provide investment advisory services primarily over the internet. This model lowered costs and expanded access to fiduciary investment advice that was previously only available to affluent investors. Betterment's offering is anchored around long-term investing goals. Betterment enthusiastically supports the goal of expanding access to retirement advice that is in investors' best interest. We appreciated the opportunity to testify before the Department on December 13, 2023, and we write to provide the Department with more detail about Betterment's support for the overarching objectives of the Proposal, as well as our recommendations to improve certain specific provisions.

With respect to the Retirement Security Rule, we appreciate the feedback from Deputy Assistant Secretary Timothy Hauser during the December 13 hearing regarding the Department's intention to preserve the current treatment of interactions between financial service providers and retirement investors that do not qualify as recommendations of specific investment products or strategies, including in the context of sales and marketing, as well as the provision of educational information. Subjecting these interactions, which are far removed from individualized investment recommendations, to a fiduciary standard would have the likely effect of reducing access to information, raising costs, benefitting incumbents, and reducing competition to the detriment of retirement investors. We also believe that the Proposal should give level-fee fiduciaries, who have no incentive to steer clients to particular investment products, more latitude with respect to the scope of interactions with investors before they are treated as recommendations.

With respect to the revised prohibited transaction exemptions ("PTEs"), Betterment supports the proposed expansion of PTE 2020-02 to include digital investment advice, as well as the broader aims of PTE 2020-02, namely, to ensure that retirement investors are provided with key information relevant to any investment recommendations. With that said, the Department should reconsider the fee comparison requirement (which is unduly burdensome for smaller and independent providers) and the retrospective review requirement as it applies to providers of digital advice.

## I. Background

### A. Betterment's Business Model

Betterment manages over $40 billion on behalf of over 800,000 clients, with a median age of around 40. We use technology to create engaging and transparent digital experiences that help clients identify investment and savings goals (such as retirement), select managed portfolios, and track their progress toward those goals. Our portfolios are composed primarily of globally diversified, low-fee exchange-traded funds ("ETFs"). We serve individual investors through our retail platform and employer-sponsored retirement plans through our Betterment at Work platform. Betterment at Work caters specifically to small and medium size businesses as an all-in-one 401(k) plan recordkeeper and investment manager, providing bundled ERISA 3(16) administrative fiduciary, recordkeeping, and ERISA 3(38) investment management fiduciary services to 401(k) plans and participants through a digital interface at competitive cost. By providing digital, low-cost, independent investment services to 401(k) plans, Betterment at Work has expanded access to fiduciary investment advice to a multitude of small business employees.

Our business is designed to be fundamentally aligned with our clients' interests. Betterment clients pay a single, asset-based fee for the fiduciary advisory services that we provide. For Betterment retail clients, that fee is typically 0.25% of assets under management, or $4 per month for accounts below $20,000. Participants of Betterment-managed 401(k) plans typically pay 0.25% of assets under management unless their employer elects to cover those fees. Because our fees grow when our clients' balances grow, we are incentivized to identify and select better or less costly investments, allowing us to continually drive down individual portfolio costs and generate significant market pressure in favor of lower fee products for retirement investors. Our compensation does not vary based on the particular securities we recommend, such that our portfolio construction is unconflicted, unlike firms that recommend proprietary products. Additionally, because we are not compensated based on our clients' trading volumes, we have no incentive to engage in frequent trading or to encourage our clients to do so.

### B. The Current State of Retirement Savings

Many Americans face a significant shortfall in their retirement savings, exacerbated by rising health care costs and longer life expectancies.[1] The shift from defined benefit plans to defined contribution plans has placed greater responsibility on individuals to navigate the complexities of the markets themselves.[2] In this environment, access to personalized investment advice is crucial to helping investors establish good savings and investing habits early in their careers, which increases the probability of good retirement savings outcomes.[3]

Unfortunately, the type of client-aligned business model that Betterment employs is far from universal across retirement offerings. This is true notwithstanding recent rulemakings from the Department and other agencies, including the Securities and Exchange Commission's ("SEC") Regulation Best Interest. Although it is difficult to pinpoint the financial impact of conflicted advice on retail investors, both in the form of higher fees and lost returns, estimates are easily in the tens of billions of dollars each year.[4]

## II. Recommendations

Betterment hopes to see a final rule that expands access to high quality retirement advice, ensures that all investment recommendations are subject to the same stringent standard of

---

[1] John Elflein, "Life Expectancy - Men at the age of 65 years in the U.S. 1960-2021" (December 12, 2023) *available at* https://www.statista.com/statistics/266657/us-life-expectancy-for-men-aat-the-age-of-65-years-since-1960/ (noting that men in the United States aged 65 can expect to live 17 more years on average than in 1960 and that women aged 65 years can expect to live around 19.7 more years on average than in 1960).

[2] GAO Report, "Older Workers: Retirement Account Disparities Have Increased by Income and Persisted by Race Over Time" (Jul. 2023) at 4, *available at* https://www.gao.gov/assets/gao-23-105342.pdf.

[3] OECD, "Advancing the Digital Financial Inclusion of Youth" (2020) at 35, *available at* https://www.oecd.org/daf/fin/financial-education/advancing-the-digital-financial-inclusion-of-youth.pdf.

[4] Alicia Munnel, "President Biden's Proposal to Control Conflicted Advice Will Improve Retirement Security," (November 13, 2023), *available at* https://crr.bc.edu/president-bidens-proposals-to-control-conflicted-advice-will-improve-retirement-security/ (estimating that costs of "100 basis points over a 40-year period reduces final assets by about one-fifth").

conduct, and minimizes product-level conflicts of interest. The recommendations below are intended to help the Proposal accomplish these goals.

**A. Retirement Security Rule**

The release accompanying the Proposal (the "Release") notes that fiduciary status should only attach in a context in which "the retirement investor can reasonably place their trust and confidence in the advice provider."[5] Betterment agrees with this principle. However, it is in tension with the amended definition of "investment advice fiduciary" in Section 2510.3-21(c)(1) ("Section (c)(1)") of the Proposal, which we respectfully believe is overbroad in certain respects. In particular, the amended definition of "investment advice fiduciary" arguably includes investment-related general marketing communications and educational information, sales-related "hire me" conversations, information regarding plan design, and the use of distribution partnerships. Because there is no reasonable expectation of trust and confidence from the investor in each of these contexts, the Department should clarify that no fiduciary status should attach in these circumstances.

There remains an important place for investor marketing and education where it is practically impossible to obtain sufficient information to satisfy the fiduciary duty of prudence, particularly when the subject of the communication is general information about a financial provider's investment offerings that is not particularized to a specific product or investment. However, subject to our suggestion below to provide more latitude to level-fee fiduciary advisers, we agree that a fiduciary standard should apply to interactions that seek to steer investors to particular investment products (especially proprietary products, which create a fundamental conflict of interest). But subjecting general, non-investment-specific marketing and educational communications to a fiduciary standard raises the costs and potential liability associated with making those communications, which is likely to chill firms' willingness to provide investors with free educational information and to reduce investors' ability to discover alternative providers.[6] Put simply, this will reduce investor access and choice. It will also advantage large incumbent firms relative to innovative, lower-cost offerings with comparatively limited brand awareness.

---

[5] DOL, "Fact Sheet: Retirement Security Proposed Rule and Proposed Amendments to Class Prohibited Transaction Exemptions for Investment Advice Fiduciaries" (Oct. 31, 2023), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/retirement-security-proposed-rule-and-proposed-amendments-to-class-pte-for-investment-advice-fiduciaries.

[6] Practically, if marketing and educational communications are subject to a fiduciary standard, firms could be held liable for a breach of fiduciary duty based on marketing. Fiduciary liability for marketing and educational information will necessarily reduce the availability of, and increase the costs of, such communications for investors.

Betterment

Additionally, not all financial providers are situated similarly with respect to their incentives to recommend particular investment products in investor accounts. Specifically, concerns about product-level conflicts of interest that animate most of the Proposal are far less applicable to level-fee investment advisers, whose revenue models inherently mitigate the risk that they would recommend investment products that put the adviser's interest above that of their clients.

Accordingly, we believe that the text of the Proposal warrants clarification in two critical respects:[7]

1. The text of the final rule should provide a more tailored definition of "recommendation" that makes clear that the delivery of non-individualized information about a financial service provider's offering that is not specific to a particular investment product or strategy is not a fiduciary recommendation.

2. The text of the final rule should state specifically that general marketing and educational communications, "hire me" conversations, and sales distribution by a third-party on an adviser's behalf are not considered "recommendations" and are not subject to a fiduciary standard (even if the interaction discusses specific investments), when made by level-fee investment advisers who lack financial incentives to steer an investor to a particular investment product.

1. <u>General marketing and educational communications</u>

A robust educational exemption that allows retail investors to (a) receive general marketing and educational communications, and (b) better understand the services a potential provider offers is essential to ensuring that more investors receive fiduciary retirement advice. Information about investment philosophy, platform functionality, and cost, among other things, can be very helpful for retail investors as they seek to learn more about potential providers. Such basic information may impact whether an investor will consider a rollover and may be sufficient for certain investors to reasonably make an informed decision about a provider without seeking a recommendation. So long as these communications do not steer an investor to a particular product (especially, but not limited to, a proprietary product), exempting them from a fiduciary standard is consistent with the Department's aims of expanding investor access to retirement

[7] We believe that these carve outs should be included in the text of the Final Rule, rather than simply included in the preamble, which is subject to interpretation and second-guessing, and does not carry the force of law upon which businesses may reasonably rely.

services and lowering costs to retirement investors. Without modifications that give providers confidence that these interactions will not be subject to a fiduciary standard (and corresponding potential fiduciary liability), the Proposal is likely to reduce the circumstances in which retirement investors can receive even the most basic information to help them determine whether to seek investment advice. The Proposal also risks impairing beneficial competition among providers.

Betterment's experience engaging retail investors who are considering a rollover illustrates the significance of non-fiduciary educational interactions that do not recommend specific investments for an investor's account. Betterment's managed account offering is built using managed portfolios of non-proprietary, low-cost, diversified ETFs, which are managed according to a client's investing goal and time horizon (such as expected retirement age).[8] While this approach resembles a target date fund, it offers more individualized adjustments. Prospective clients need information about our investment strategies, platform functionality, and fees in order to understand our investment advisory services and make informed comparisons to other potential providers.

With respect to investment advisers – whose marketing and communications are subject to the broad anti-fraud and disclosure requirements under the Advisers Act – the Proposal as currently drafted would reduce critical investor communications and education from entities more than willing to serve as investment fiduciaries when making actual recommendations. General marketing and educational communications of level-fee fiduciary advisers, whether directed at prospects or at existing clients, should not be subject to the full set of requirements associated with a fiduciary recommendation. These advisers do not have any financial incentive to recommend particular investment products, and any non-product related conflicts of interest are already subject to disclosure and controls requirements under the Advisers Act, specifically the Marketing Rule, Rule 206(4)-1.

Further, because level-fee advisers do not have financial incentives to steer investors to a particular investment product, they should have more flexibility under the Proposal to deepen their relationships with existing clients by providing information about additional services they could provide to such clients. For example, a client with a taxable investing account might receive marketing communications about the firm's retirement options, including rollovers. Non-individualized marketing communications made by a level-fee adviser that simply prompt existing clients to consider a rollover should not be considered fiduciary advice even if they

[8] *See* "Betterment Retirement Planning Advice Disclosure" (updated December 1, 2023) *available at* https://www.betterment.com/legal/retirement-planning-advice.

describe the investments or investment philosophy that would apply to the management of the retirement account.

2. <u>“Hire me” and plan design conversations with plan sponsors</u>

Recordkeepers for ERISA plans typically offer a wide variety of services and features. Although many of these services are not related to the recommendation of investments, certain providers offer investment management services through affiliates as a component of a bundled service offering. Under Section (c)(1) of the Proposal, such providers risk having all of their interactions (not only those with the fiduciary entity) subject to a fiduciary standard.[9] Subjecting pre-engagement “hire me” conversations of providers that ultimately will serve as fiduciary ERISA investment managers (once a plan is established) to a higher standard will raise the costs of sales and marketing for such providers relative to traditional non-fiduciary recordkeepers. Given the compliance burdens and risk of fiduciary liability for failures, this will undoubtedly penalize hire me efforts of innovative, bundled service providers by limiting the circumstances in which these firms are willing or able to engage with employers to discuss potential 401(k) services.

Plan sponsors typically have conversations with numerous potential providers before ultimately committing to establish a new plan or to initiate a conversion. For providers that offer bundled administrative, recordkeeping, and fiduciary investment management services, these interactions will nearly always include discussions of investment options or other investment capabilities, often entirely without regard to specific investments or investment strategies. Instead, at this stage in the sales process, providers typically convey general information regarding their services to help plan sponsors to make an informed decision.

For advisers with revenue models that create no incentive to recommend particular investments for a plan’s account, even if those conversations speak to particular investments or strategies that might be recommended if the plan ultimately engages the provider, the potential conflicts of interest against which the Proposal guards are absent. As noted above, fiduciary investment advisers’ marketing communications (including sales conversations) are already subject to the broad anti-fraud and disclosure requirements under the Advisers Act.

The Proposal should therefore be clarified to ensure that “hire me” conversations with investment advisers who do not have a financial incentive to recommend particular investments

---

[9] Under the Proposal, a person is an investment advice fiduciary if they, directly or indirectly through or together with an affiliate, provide recommendations of “any securities transaction or other investment transaction or other investment strategy involving securities or other investment property” to a plan, plan fiduciary, plan participant or beneficiary, IRA, IRA owner or beneficiary, or IRA fiduciary and receive a fee for these services.

do not trigger fiduciary status. The Proposal should be revised to explicitly differentiate between level-fee advisers' (i) general "hire me" discussions of investment approach and costs, as well as potential alternatives, on the one hand, and (ii) fiduciary "recommendation[s] . . . of any investment strategy involving securities," on the other. To the extent the Department has concerns about the risks present in "hire me" interactions with level-fee advisers, those risks can be mitigated sufficiently through existing disclosure requirements under the Advisers Act.

Relatedly, conversations between sales and onboarding associates of advisers and plan sponsors that relate to plan design and occur as part of the "hire me" or onboarding process should not be subject to a fiduciary standard, and the final text of the Proposal should clarify that plan design conversations do not constitute fiduciary investment "recommendations."[10] Plan sponsors acting as settlor often need education and support on topics such as eligibility criteria, whether to offer plan loans, automatic enrollment, automatic escalation, and employer matches. Sales and onboarding personnel of advisers often help plan sponsors navigate these questions during the sales process.

3. Distribution arrangements

The Proposal also threatens a host of sales and distribution arrangements that are far removed from the recommendation of investments. Providers often pay distribution partners, such as human resource and payroll providers, accounting firms, and insurers to identify and, in some cases, market 401(k) services or retail retirement services (*e.g.*, IRA and rollover services) to the distribution partners' clients. These partnerships are crucial to facilitating robust choice and discoverability with respect to retirement services providers.[11] Given the constraints imposed

---

[10] Although the Proposal's definition of fiduciary in Section (c)(1) appears to exclude plan design conversations that do not relate to "any securities transaction or other investment transaction or any investment strategy involving securities or other investment property," the Release to the Proposal suggests that the Department intends to capture plan design conversations about plan defaults within its scope. Betterment agrees that recommendations of investment alternatives or the QDIA would be discussions of investment strategies that should be held to fiduciary standards if the provider has a financial incentive to recommend a particular investment, but we do not believe plan design conversations with level-fee advisers present the same risks. The Department should not subject plan design conversations (such as those concerning automatic enrollment, default contribution rates, or the QDIA strategy – topics identified specifically in the Release – among others) to a fiduciary standard when they occur between a plan sponsor and level-fee adviser with no financial incentive to recommend a particular default. We urge the Department to clarify this potential ambiguity.

[11] Indeed, distribution partnerships can work to make 401(k) plans more accessible to plan sponsors, particularly for small and medium size plan sponsors, who might not otherwise set up a 401(k) plan for their employees. For example, referral partnerships between a 401(k) recordkeeper and payroll or human resources providers often serve plan sponsors' – and by extension, participants' – interests because the payroll provider can offer streamlined integrations between the employer's payroll and the provider's 401(k) platform, cutting down on the costs of plan administration.

by PTE 2020-02 on incentive-based compensation arrangements,[12] providers are likely to limit their use – to the detriment of potential retirement investors – absent clarification that these partnerships are not subject to a fiduciary standard.

As long as information provided by third-party partners is not tied to specific investment products, the potential conflict presented by these arrangements is simply an increase in revenue associated with a successful referral. This conflict is no different from that present in hire me conversations described above and disclosure is a similarly sufficient mitigant for distribution incentives as well. For investment advisers, clear and proximate disclosure of the partnership and any compensation paid to the partner are already required by the SEC's Marketing Rule. This is sufficient to address any potential conflicts; it is unnecessary for the promoter or distributor communication to be subject to a fiduciary standard. Especially for providers with client-aligned models, such as those that charge level, asset-based fees, the more burdensome requirements contemplated by the Proposal are unnecessary and would undermine a robust marketplace for retirement services.

We therefore urge the Department to clarify that distribution partnerships and referrals should be entitled to similar treatment under the rule as educational information and hire me conversations. Specifically, the final text of the Proposal should state explicitly that a referral of a level-fee fiduciary advisor to a plan sponsor (with respect to 401(k) services and regardless of whether investment services will be provided as part of a bundled offering) or to a retail retirement investor (with respect to IRA and rollover services) is not a fiduciary recommendation.

### B. PTE 2020-02

We support the proposed expansion of PTE 2020-02 to digital investment advice. We believe that advice is advice, regardless of medium. So long as quality advice can be provided in

---

[12] Proposing Release to PTE 2020-02 (at page 28-30), *available at* https://www.dol.gov/sites/dolgov/files/ebsa/temporary-postings/proposed-amendment-to-pte-2020-02.pdf, states in the context of the policies and procedures requirement: "To satisfy Section II(c), Financial Institutions may not use quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation, or other similar actions or incentives that are intended, or that a reasonable person would conclude are likely, to encourage Investment Professionals to make recommendations that are not in Retirement Investors' Best Interest." The Release provides an example of an arrangement that would be prohibited - where investment professionals receive the same percentage compensation as the financial institution for a recommended investment product, as for other products, effectively passing along product-level conflicts to investment professionals. The Release should also clarify in PTE 2020-02 that the converse scenario would not be prohibited: *i.e.,* the PTE should state explicitly that incentive compensation that is equalized across investment products – such that professionals (including third-party referral partners) who do not receive differential compensation based on the recommendation of particular investment products, but rather receive incentive or referral compensation based on attracting clients, plans, assets to the platform regardless of investment product – is not prohibited by the PTE.

a manner consistent with the requirements of the PTE, it is in investors' interest to allow it to be provided in any form, including digitally. Digital advice has proven effective in expanding access and lowering costs for investors. Using thoughtful design choices, digital interfaces are often uniquely capable of presenting understandable breakdowns of investment information, including fees and revenue streams associated with the investment products in an account.

We also support the aim of PTE 2020-02 to ensure that retirement investors are provided with important information and disclosures that are relevant to an investment recommendation. However, we urge the Department to reconsider the procedural burdens of compliance with the proposed amendments to PTE 2020-02, particularly the requirement to include a fee comparison when making a rollover recommendation, as well as the retrospective review requirements.

Although the Department has taken steps to reduce certain aspects of the compliance burden associated with rollover recommendations,[13] PTE 2020-02's fee comparison requirement is particularly burdensome for recent market entrants and independent providers as compared to incumbents. In certain cases, providers may need to request specific fee information from investors to conduct such a comparison. In our experience, retail investors may not have access to (or not know where to find) fee information about their current plan necessary to enable providers to make a fiduciary rollover recommendation as required under PTE 2020-02. Many providers also do not make their fee information easily accessible for other firms to review or locate, in an apparent effort to retain customers who might be considering a roll out. Although fee data aggregation services are available, their data sets are limited, costs are prohibitively expensive for smaller firms, and certain large incumbents have opted out of data sharing with certain aggregators.[14] As such, making an accurate fee comparison based on third-party services

---

[13] These steps include issuing guidance concerning PTE 2020-02's requirement to provide a written acknowledgment of a provider's fiduciary role (for which the Department has helpfully provided model language), and the requirement to provide a written disclosure of investment services to be provided and conflicts of interest (which the Department has helpfully acknowledged can be satisfied by providing prospects and clients a copy of the firm's Form ADV and Form CRS).

[14] Data aggregation services have only automated the process of obtaining fee information to some extent, and rely on competitor firms sharing their fee information freely, which is often not the case. Certain firms have cut off third-party access to their fee information, or require aggregators to pay data fees to affiliates (fees which are then passed along to other firms trying to access the data). The Consumer Financial Protection Bureau's proposed rulemaking on Dodd-Frank Section 1033, which would create a consumer-permissioned right to share financial data, is expected to address these issues to some extent, but that rule has not yet been finalized. *See, e.g.,* "Big US Banks to become joint owners of consumer-data sharing network Akoya" (February 20, 2020), *available at* https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/big-us-banks-to-become-joint-owners-of-consumer-data-sharing-network-akoya-57196084; *see also* Oisin Breen, "Fidelity Just dropped the hammer on screen scrapers but some firms, like Plaid, are holdouts and the CFPB may wield the final gavel" (October 19, 2023), *available at* https://riabiz.com/a/2023/10/19/fidelity-just-dropped-the-hammer-on-screen-scrapers-to-cheers-but-some-firms-like-plaid-are-holdouts-and-the-cfpb-may-wield-the-final-gavel.

is virtually impossible, even for providers who attempt to do so in good faith. The fee comparison requirement risks tilting the playing field away from newer and more innovative providers toward traditional incumbents.

The Department's 2016 fiduciary proposal included a streamlined approach to rollover-related disclosures for level-fee fiduciaries without access to all information required to otherwise make a fiduciary recommendation.[15] A similar approach should be included in the Proposal, such that investors can receive rollover recommendations from level-fee fiduciaries notwithstanding incomplete fee information. This modification is particularly important in light of the potential limits on educational communications surrounding rollovers discussed above.

Finally, the retrospective review requirements, including the required certification by a Senior Executive Officer,[16] will be procedurally burdensome for firms that make digital rollover recommendations and seek to avail themselves of the updated PTE. As long as a firm's algorithms are designed to satisfy the PTE, and it has reasonable policies and procedures in place to monitor those algorithms (including appropriate software testing), the practical risk that a particular recommendation will depart from the requirements of the PTE is negligible. Accordingly, the retroactive review requirement serves little purpose other than to impose additional burden, and digital rollover recommendations other than to proprietary products should be exempted from that requirement or subject to a process that better fits the specific risks associated with providing digital advice at scale.

---

[15] A best interest contract exemption (the "BIC Exemption") under the 2016 fiduciary proposal offered advisers an opportunity to comply with a streamlined set of disclosure requirements under the BIC Exemption if they qualified as a "level fee fiduciary," meaning their fee or compensation is provided on the basis of a fixed percentage or a set fee that does not vary with the particular investment recommended, rather than a commission or other transaction-based fee. The proposal would have required a level fee fiduciary to (i) provide a written statement of their fiduciary status, (ii) comply with the impartial conduct standards, (iii) in the case of rollover recommendations, document the specific reasons the rollover was in the best interest of the retirement investor, including considering alternatives to the rollover, and crucially, *if permitted*, take into account the fees and expenses of the current plan and the IRA, and (iv) if the rollover recommendation involved rolling from a commission-based account to a level fee arrangement, document why the level fee arrangement was in the best interest of the retirement investor. "Fiduciary Rule - Best Interest Contract Exemption," Groom Law Group (April 8, 2016), *available at* https://www.groom.com/wp-content/uploads/2022/12/A-Fid-Reg-BIC-GLG-Apr.-8-2016-v1.pdf.

[16] PTE 2020-02, Section II(d), *available at* https://www.dol.gov/sites/dolgov/files/ebsa/temporary-postings/proposed-amendment-to-pte-2020-02.pdf

### III. Conclusion

In sum, the Proposal could be improved to ease certain burdens without sacrificing the important objective of raising standards of conduct throughout the industry.

Sincerely,

Joshua Rubin

Joshua Rubin
Vice President, Legal