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WORLD-CLASS INVESTMENT MANAGER®

September 12, 2017

Office of Exemption Determinations, EBSA (Attention: D-11712, 11713, 11850)
U.S. Department of Labor
200 Constitution Avenue, Suite 400
Washington, DC 20210

Re: Proposed Extension of Transition Period and Delay of Applicability Dates - RIN 1210-AB82

Ladies and Gentlemen:

I am writing to comment on the proposed extension of the transition period and delay of applicability dates for the Best Interest Contract ("BIC") Exemption (PTE 2016-01) and certain other class exemptions, as published in the Federal Register on August 31, 2017 (82 Fed. Reg. 41,365).

Federated Investors, Inc. is one of the nation's largest investment managers, with $360.4 billion in assets under management. It distributes its mutual funds and other investment products through more than 8,500 financial intermediaries and institutions, including banks and broker-dealers, who in turn may recommend Federated funds to their clients, including retirement investors such as ERISA plans and IRAs. For this reason, our firm has developed materials to assist the financial intermediaries and institutions in complying with the amended ERISA fiduciary investment advice definition and BIC Exemption in their dealings with retirement investors, and we have also assisted these firms where possible in addressing particular questions as they work diligently to meet the January 1, 2018 applicability date.

We support the extension of the transition period and delay of applicability date for the BIC Exemption as proposed by the Department. We share the concern that banks and broker-dealers may incur undue expense to comply with conditions or requirements that, in the course of its reexamination of the fiduciary rule and exemptions pursuant to the Presidential Memorandum of February 3, 2017, the Department may ultimately decide to revise.

As the Department acknowledges, absent the proposed delay, financial institutions will see themselves as obligated to prepare for an applicability date of January 1, 2018, despite the possibility that the Department may, based on its reexamination of the rule, propose alternatives. Given that it is already September 2017, we agree with the Department's statement that no changes or modifications to the regulation or exemptions could realistically be implemented – much less proposed and finalized by the Department – by the January 1, 2018 date.

The Department requested comments on certain alternatives to the proposed time-certain delay to July 1, 2019. We believe that the time-certain delay is the most appropriate and workable choice under the circumstances, because it provides financial services firms, plan sponsors, plan participants and beneficiaries, and IRA owners with the certainty of a clear time period and target date. If the circumstances approaching July 1, 2019 indicate a need for a further delay, we would expect that the Department will, at that time, evaluate and provide what would be a reasonable time period to come into compliance based on the nature and extent of any changes it has decided to make to the existing regulation and exemptions.

Importantly, we note – as the Department pointed out in its Regulatory Impact Analysis – that the expanded definition of fiduciary investment advice already became applicable on June 9, 2017, as did the Impartial Conduct Standards as a condition of compliance with the BIC Exemption. These provide the key protections for Retirement Investors under the new framework, imposing prudence and loyalty standards on all those now treated as providing fiduciary investment advice in order for them to receive variable compensation in connection with their advice. For these reasons, as the Department indicated, investor losses (if any) from extending the transaction period would be expected to be relatively small, and as such outweighed by the cost savings to firms by postponing changes that may become unnecessary, or may have to be revisited, following the completion of the Department's evaluation.

With regard to the other suggested alternatives:

1. *A delay that would end a specified period after the occurrence of a specific event – for example, a delay lasting until 12 months after the Department concludes its review as directed by the Presidential Memorandum.* We agreed with the Department's concern that a contingent time period of this nature would not provide sufficient certainty to those who are working to comply. As noted above, the Department will have the flexibility to further extend the transition period if warranted under the circumstances, for example, if additional time is required to complete the review or finalize any changes being made.

2. *A tiered approach – for example, delaying the end of the transition period until the earlier or the later of (a) a date certain or (b) the end of a period following the occurrence of a defined event.* While this would have the advantage of building in an automatic extension if needed, it may be difficult to determine what the appropriate defined event would be or how much time will be needed to come into compliance following that particular event. What would be a reasonable period for compliance may differ based on the nature of the particular change. We also agree with the Department's concern that it could be difficult for a firm to communicate such a contingent applicability date to customers.

3. *A delay conditional on the behavior of the entity seeking relief – for example, whether the entity is taking steps to use a market innovation to comply with the rule.* We are concerned that this type of rule would be very difficult to apply, as the steps needed to come into compliance will depend to a large extent on a firm's approach, and a firm's approach will depend in large part of its interpretation of exceptions in the regulation, or exemption conditions, that could be subject to change. To address the risk of losing coverage under an exemption, market participants would require detailed guidance as to what steps qualify for this relief and what steps are considered insufficient, placing a burden on the Department to develop guidelines to deal with a number of different circumstances that can then lead to additional questions. Because this could become unworkable, we urge the Department not to adopt such an approach.

The Department also asked for comments on whether to extend the temporary enforcement policy covering the current transition period, during which the Department will not pursue claims against investment advice fiduciaries who are working diligently and in good faith to comply with their fiduciary duties and to meet the conditions of the exemptions, or otherwise treat those investment advice fiduciaries as being in violation of their fiduciary duties and not compliance with the exemptions. Because of some uncertainties in applying the new rules and exemptions, and the likelihood of additional guidance from the Department that may affect firms' compliance approach, we support the extension of the temporary enforcement policy for the duration of the extended transition period. We note that because this policy is based on diligent and good faith efforts at compliance, its purpose is not to permit actions that place plans and their participants and beneficiaries at risk, but rather to avoid second-guessing firms that undertake good faith compliance efforts based on interpretations that are affected by subsequent guidance or changes to the regulation or exemptions.

Thank you for your consideration.

Very truly yours,

Eugene F. Maloney
Executive Vice President and
Corporate Counsel

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