

September 14, 2017

Office of Exemption Determinations
Employee Benefits Security Administration
Attention: D-11712, 11713, 11850
U.S. Department of Labor
200 Constitution Ave., NW, Suite 400
Washington, D.C. 20210

Re: Extension of Transition Period and Delay of Applicability Dates; Best Interest Contract Exemption (PTE 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016-02); Prohibited Transaction Exemption 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters (PTE 84-24) – RIN 1210-AB82

Ladies and Gentlemen:

The American Bankers Association¹ (ABA) appreciates the opportunity to provide comments to the Department of Labor (Department) on the agency's notice of proposed amendments to extend the special transition period for certain provisions of the Best Interest Contract (BIC) Exemption and Principal Transactions Exemption, and to extend the date of applicability of certain amendments to Prohibited Transaction Exemption (PTE) 84-24 (collectively, Exemptions). The proposed amendments (Proposal) would extend the present transition period by a total of 18 months, from January 1, 2018, to July 1, 2019. The Department has stated that the Proposal's primary purpose is to give the Department sufficient time to re-examine and consider possible revisions to the Fiduciary Rule² and the Exemptions.

We commend the Department for proposing an 18-month extension to allow the Department the opportunity to (i) complete its re-examination and re-evaluation of the Fiduciary Rule and the Exemptions, (ii) review the public comments received on the Department's recent Request for

¹ The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits, and extend more than \$9 trillion in loans. Many of these banks are plan service providers, providing trust, custody, and other services for institutional clients, including employee benefit plans covered by the Employee Retirement Income Security Act (ERISA). Our member banks also routinely provide services for retail clients through individual retirement accounts and similar accounts that are covered by the Internal Revenue Code (Code). Learn more at www.aba.com.

² The Fiduciary Rule defines who is a "fiduciary" under ERISA and the Code as a result of giving investment advice for a fee or other compensation to a plan or its participants, or to the owner of an individual retirement account (IRA).

Information,³ and (iii) determine whether and how to revise the Fiduciary Rule and the Exemptions. As the Department has acknowledged, “[w]hether, and to what extent, there will be changes to the Fiduciary Rule and [Exemptions] as a result of this reexamination *is unknown until its completion*.”⁴ Moreover, the Department has expressed concern that “without a delay in the applicability dates, regulated parties may incur undue expense to comply with conditions or requirements that it ultimately determines to revise or repeal.”⁵ Indeed, banks already have incurred significant expense in connection with the Fiduciary Rule and Exemptions as they currently are written. Banks further wish to avoid additional disruptions in customer services as well as the commitments of time, labor, and resources – costs that may prove unnecessary and could therefore be more beneficially applied – until any revisions considered by the Department are finalized and enacted.

We agree with the Department that an 18-month extension to the transition period is warranted. We raised the following point in our comment letter of July 21, 2017, to the Department:

[I]t is difficult for institutions to determine where to allocate resources for compliance when the Department itself is in the process of re-examining the Fiduciary Rule’s scope and content. The uncertainty of regulatory changes or revisions may have institutions pursuing multiple or alternative paths to compliance that cannot be resolved fully until the Department determines that no further changes or revisions will be made.⁶

The Department likewise expresses the same concern in the Proposal:

Absent the proposed delay . . . [financial services providers] would feel compelled to ready themselves for the provisions that become applicable on January 1, 2018, despite the possibility of alternatives on the horizon. Accordingly, the proposed delay avoids obligating financial services providers to incur costs to comply with conditions, which may be revised, repealed, or replaced, as well as attendant investor confusion . . . and unnecessary harm [to] consumers by adding uncertainty and confusion to the market.⁷

The proposed extension further would allow the Department additional time to coordinate with the Securities and Exchange Commission, which currently is considering whether to propose a

³ See Department of Labor, Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions, 82 *Fed. Reg.* 31,278 (2017).

⁴ Department of Labor, Extension of Transition Period and Delay of Applicability Dates; Best Interest Contract Exemption (PTE 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016-02); Prohibited Transaction Exemption 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters (PTE 84-24), 82 *Fed. Reg.* 41,365, 41,371 (2017) (Department Release). [Emphasis added.]

⁵ *Id.* at 41,365.

⁶ ABA Comment Letter to Department of Labor, Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (July 21, 2017) (ABA Letter). This situation further may lead to customer confusion as to which requirements apply to a bank or other institution under the Fiduciary Rule, given that the Fiduciary Rule itself may be subject to further changes or revisions.

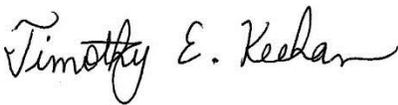
⁷ Department Release, 82 *Fed. Reg.* at 41,371.

best interest standard that would apply to broker-dealers and investment advisers when providing personalized investment advice to retail investors.⁸ Joint efforts between the Department and the Commission should assist in progressing toward a uniform and consistent best interest standard that would apply both to retirement and non-retirement assets, while avoiding the unintended consequences of two separate and possibly disparate regulatory schemes. Further, as we have stated previously,⁹ the federal banking regulators at this time have not issued any guidance to banks concerning the Fiduciary Rule and the Exemptions and have not made clear to the banking industry the agencies' expectations for supervision and examination. Extending the transition period by an additional 18 months would allow the federal banking regulators, in consultation with Department staff, the opportunity to determine and then communicate their regulatory expectations for banks subject to the Fiduciary Rule. Given the interpretive uncertainties surrounding the requirements of the Rule and the Exemptions, we also agree with the Department that its temporary enforcement policy, covering the transition period between June 9, 2017, and January 1, 2018, likewise should be extended 18 months.¹⁰

The Proposal requests comment on three possible approaches to implementing the proposed extension: (1) a delay set for a fixed date; (2) a delay that ends a specified period after the occurrence of a particular event; and (3) a tiered approach where the delay is set for the earlier of or the later of (a) a fixed date, and (b) the end of a specified period after the occurrence of a particular event.¹¹ As indicated above, a fixed 18-month period would minimize the costs that would be incurred by financial services providers to comply with the Fiduciary Rule and Exemptions as currently written. It would also allow the Department to measure the progress of its regulatory review against a firm deadline. If, as the deadline date approaches, it appears that additional time might be needed for the Department to complete its regulatory review, then the Department can consider at that time whether to propose such additional time as may be needed for completion. Consequently, we believe that the first alternative (a fixed 18-month period) provides sufficient clarity and certainty to all parties and therefore is the best option.

Thank you for your consideration of our views. If you have any questions, please do not hesitate to contact the undersigned at 202-663-5479 (tkeehan@aba.com).

Sincerely,



Timothy E. Keehan
Vice President & Senior Counsel

⁸ See Securities and Exchange Commission, Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers (June 1, 2017).

⁹ See ABA Letter, *supra*.

¹⁰ See 82 *Fed. Reg.* at 41,370 n. 32. Under this policy, 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 or the Exemptions. See Department of Labor Field Assistance Bulletin No. 2017-02 (May 22, 2017).

¹¹ See Department Release, 82 *Fed. Reg.* at 41,371.