



F. William McNabb III
Chairman and Chief Executive Officer

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September 15, 2017

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

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

Vanguard¹ welcomes the opportunity to comment on the Department of Labor's (the "Department") proposed 18-month extension of the special transition period of the Best Interest Contract ("BIC") Exemption and related exemptions.² We appreciate the Department's recognition that this delay is necessary to allow the Department to review the legal and economic basis for the BIC Exemption and related exemptions, how they may operate in relation to the revised definition of fiduciary ("the "Rule") and to consider public comments as required by the Presidential Memorandum.³ As we have noted in prior comments, we also believe that the transition period must be extended to allow an orderly and cost effective implementation of the remaining provisions of the Rule and BIC Exemption. Accordingly, we support the Department's

¹ Vanguard is one of the world's leading asset managers, managing over \$4 trillion for institutional and retail investors. Vanguard manages over \$1 trillion in defined contribution ("DC") and defined benefit ("DB") plan assets and provides recordkeeping and administrative services for over 4 million participants in over 6,700 DC and DB plans. We also manage over \$600 billion for over 6 million individual retirement account ("IRA") investors. We provide fiduciary investment advice to IRAs and other clients through Vanguard Personal Advisor Services, which currently has approximately \$75 billion in assets under advisement across all client types. We also provide fiduciary investment management to retirement plan clients through the Vanguard Managed Account Program, an investment management service based on systems and methodology developed and maintained by Financial Engines Advisors LLC. VMAP manages over \$20 billion on a discretionary basis.

² 81 Fed. Reg. 20946 (Apr. 8, 2016).

³ The Memorandum directs the Department to prepare an updated economic and legal analysis considering, among other things, (1) whether the Rule harms investors due to reduced access to retirement savings products, information or advice; (2) whether the Rule has resulted in dislocation or disruptions within the retirement services industry that may adversely affect investors and retirees; and (3) whether the Rule is likely to cause increased litigation and cost to investors to access retirement services. Depending on the outcome of this review, the Department is directed to issue a new proposal to revise or rescind the Rule. 82 Fed. Reg. 9675 (Feb. 7, 2017).

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proposed 18-month extension of the transition period for those provisions that are currently scheduled to become applicable on January 1, 2018.⁴

Vanguard strongly believes that investors should always receive investment advice that is in their best interest, and those who provide investment advice should be held to a fiduciary standard. At the same time, we want regulations as far-reaching as the Rule and related exemptions to be well-crafted and thoughtfully implemented to limit investor confusion, disruption and cost. Regardless of the Department's ultimate conclusions in response to the substantive questions raised by the Presidential Memorandum, the Department will need time to review and analyze the Rule's existing record along with further comments from investors, the regulated community and other stakeholders. Investors and the regulated community, in turn, will need time to ensure a clear and orderly transition to implement the requirements of the Rule. The proposed 18-month extension of the transition period is consistent with other, similar regulatory reviews undertaken by the Department.⁵

As we have noted in prior comments, the proposed delay should help allow financial institutions a realistic time frame to evaluate investment services in accordance with the BIC Exemption and, if necessary, to implement and test systems and procedures to comply with the BIC Exemption (or other related exemptions) as finalized. This orderly transition would benefit investors and the regulated community by allowing financial institutions to enhance systems and communicate a single set of any necessary changes to clients, which can help limit investor confusion and can reduce the cost of compliance while maintaining investor protections.

The Impartial Conduct Standards that are already applicable provide meaningful investor protection. This should allow the Department to closely review the Rule, the BIC Exemption and other related exemptions during the proposed 18-month extension of the transition period without concern that investors will be harmed by the delay. The Impartial Conduct Standards require that the person providing investment advice (i) act in the investor's best interest, (ii) charge no more than reasonable compensation, and (iii) not make any materially misleading statements to the investor. These requirements help ensure that investors will receive the projected economic benefits of the Rule while the Department completes its review. At the same time, the cost of compliance will be materially reduced if the Department adopts this extension of the transition period, thereby preventing financial institutions (and their clients) from incurring the cost of multiple rounds of regulatory change.

⁴ See Vanguard's March 17, 2017 comment letter on the proposed delay of the Rule's applicability date, available at <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB79/01068.pdf>; and Vanguard's July 21, 2017 comment letter on the extension of the transition period as part of the Department's Request for Information regarding the Rule and exemptions, available at <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB82/00222.pdf>.

⁵ In the case of the regulation interpreting the exemption for eligible investment advice arrangements under ERISA section 408(g), the Department delayed, reviewed and revised a rule finalized by the Bush Administration in January 2009. The revised rule was not finalized until October 25, 2011, roughly 21 months later. See 76 Fed. Reg. 66136-37 (Oct. 25, 2011) (discussing background).

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Vanguard appreciates the opportunity to submit these comments and would welcome further discussion with the Department. If there you have any questions or wish to discuss in greater detail, please do not hesitate to contact Ann Combs at 610-503-6305 or Stephanie Napier at 610-503-1377.

Sincerely,

A handwritten signature in black ink that reads "F. William McNabb III". The signature is written in a cursive style with a large, stylized initial "F" and a clear "III" at the end.

F. William McNabb III
Chairman and Chief Executive Officer
The Vanguard Group, Inc.