



September 15, 2017

Submitted Electronically – eRulemaking Portal – Docket ID: EBSA-2017-0004

Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Suite 400
Washington, DC 20210

Re: Request for Comment on Proposed Extension of Transition Period and Delay of Applicability Dates to PTE 2016-01, PTE 2016-02, and PTE 84-24 (RIN 1210-AB82)

Ladies and Gentlemen:

Nationwide¹ appreciates the opportunity to provide comment in response to the Department of Labor's (the "Department") recently published proposed amendments (the "Proposed Amendments") that, if adopted, would extend the Transition Period and delay the applicability dates of certain provisions in the Best Interest Contract Exemption (the "BIC Exemption") and the amendments to Prohibited Transaction Class Exemption 84-24 ("84-24").²

As expressed in our prior comment letters submitted in response to the Department's recent Request for Information (the "RFI"), at Nationwide, acting in our clients' best interest has always been, and will continue to be, at the core of our values.³ **Nationwide is firmly committed to supporting a retirement plan regulatory framework that focuses on increased transparency and the mitigation of conflicts while at the same time protecting consumers' access to advice, choice, and affordable products.**

We commend the Department's expressed purpose for the Proposed Amendments (*i.e.*, to provide needed time to consider changes and alternatives and to accommodate Department and SEC coordination), as we believe that the additional time will enable the Department to implement

¹ Nationwide is a Fortune 75 company based in Columbus, Ohio, and one of the largest and strongest diversified insurance and financial services organization in the United States (rated A+ by both A.M. Best and Standard and Poor's).

² 82 Fed. Reg. 41,365.

³ Nationwide provided comments to RFI question 1 ("Potential Delay of January 1, 2018 Applicability Date") by separate letter dated July 21, 2017. Nationwide incorporates by reference its comment letters submitted to EBSA associated with the RFI, dated July 21, 2017 (Comment Letter #224) and August 7, 2018 (Comment Letter #571).

a coordinated and workable financial regulation that protects America's retirement savers while avoiding the imposition of undue burdens and unintended consequences. With this in mind, Nationwide offers for the Department's consideration, the following comments which are intended to further supplement and support our previously submitted comments.

Extending the Transition Period Through a Tiered Approach Provides a Needed Period of Certainty While Accommodating Further Amendments and Alternatives:

Nationwide respectfully requests, as highlighted in our prior comment letter to RFI question 1, that the Department adopt a tiered approach to extending the Transition Period, thereby delaying the applicability dates of certain provisions of the BIC Exemption and 84-24. This tiered approach should make the end of the Transition Period and the applicability of outstanding, amended and/or new requirements under the BIC Exemption and 84-24 dependent on the following: (1) the passage of a reasonable fixed period of time, and (2) the completion of three key events, as identified further below.

As the first component of a tiered approach, Nationwide supports the Department's proposed extension of the Transition Period via a fixed period of 18-months. We believe 18-months is reasonable and will provide a needed period of certainty regarding retirement savers' continued access to advice, choice, and affordable investment products in the face of likely but still unknown changes to the BIC Exemption and 84-24. The proposed 18-months will provide the Department with the time needed to complete the ongoing examination of its rule refining fiduciary investment advice and providing new or amended prohibited transaction exemptions (collectively, the "Fiduciary Rule") and adopt any needed amendments and/or new alternatives.⁴ Perhaps more importantly, the proposed 18-months will allow for a meaningful discussion between the DOL and other key regulators, including the SEC, thereby allowing coordination on further regulatory action.

As the second component of a tiered approach, Nationwide recommends the Department not permit the Transition Period to end until the completion of three key events, even if their completion takes longer than 18-months. Nationwide recommends the Department acknowledge and/or adhere to the following three key events:

- (1) Completion by the Department of its ongoing examination of the Fiduciary Rule;
- (2) Adoption of all amendments to the Fiduciary Rule following the completion of the examination; and
- (3) Establishment of a new reasonable Transition Period to implement those amendments (e.g., twelve months).

The key event component of a tiered approach safeguards against potential harms and undue burdens that are likely to abound from new and/or amended requirements whose application is driven *solely* by the passage of an arbitrary period of time. Requiring the occurrence of all three key events would help ensure that there is adequate time for an informed and coordinated implementation of any new, amended, and/or outstanding requirements. This approach could also remove the need for supplemental Department rulemaking or guidance in the event that the proposed 18-month extension proves to be insufficient.

⁴ 81 Fed. Reg. 20,945-21,221 (Apr. 8, 2016).

A Tiered Approach Does Not Present Additional Costs and Risks to Retirement Savers:

As the Department wrote in its economic analysis of the impact of the Transition Period, most of the anticipated benefits to retirement savers come from the Impartial Conduct Standards that became applicable on June 9, 2017, and not from the prohibited transaction exemptions that are scheduled to become applicable on January 1, 2018.⁵ Importantly, adopting a tiered approach for extending the Transition Period will provide for the benefits described above while not unduly compromising the protections for retirement investors that have already become applicable.

Conclusion:

At Nationwide, our core values have always motivated us to do right by our customers. We therefore support the goals of the Fiduciary Rule and further support the Department's efforts to improve its execution. Extending the Transition Period through a tiered approach is essential to protecting our clients' best interests and the overall best interests of America's retirement savers.

If you have questions about anything in this letter, or if we can be of any further assistance as the Department considers extending the Transition Period, please feel free to contact Ben Brewster in Nationwide's Government Relations Department at 202-347-5914 or via email at brewstb1@nationwide.com.

Sincerely,



Kirt A. Walker
President and Chief Operating Officer
Nationwide Financial

⁵ "Because of Firms' anticipated efforts to satisfy the Impartial Conduct Standards...the Department believes that most...of the investor gains predicted in the 2016 RIA for the transition period will remain intact." 82 Fed. Reg. 16,907 (Apr. 7, 2017).