

VIA THE FEDERAL eRULEMAKING PORTAL

July 17, 2020

Office of Exemption Determinations
Federal eRulemaking Portal
Application No. D-12011

Re: Improving Investment Advice for Workers and Retirees (Docket ID number: EBSA–2020–0003)

To Whom It May Concern:

On July 7, 2020, the Department of Labor (the Department) published its request for public comment on a proposed class exemption entitled Improving Investment Advice for Workers & Retirees¹ (the Proposal). On June 29, 2020, the Department also held a background briefing conference call outlining the framework for this Proposal and made available materials on its website (including the text of the proposed class exemption in advance of publication in the Federal Register). The Financial Services Institute² (FSI) appreciates the Department’s efforts to provide this information on its Proposal.³ The Department outlined a 30-day public comment period and FSI supports the Department’s efforts to complete this process and provide regulatory certainty on an issue that has been under review since October 22, 2010, when the Department first proposed broadening the definition of investment advice.

In short, the Department, in forming the proposed class exemption, and stakeholders, in reviewing it, are not starting with a “blank slate.” Instead, the Department and the public have the benefit of a robust record developed in connection with the Department’s 2015 “Fiduciary Rule” proposal (which became final April 8, 2016).⁴ This well-established public record includes over 3,000 comments (submitted over two comment periods), four days of public hearings in 2015 (with 75 participants), a litigated case in federal court, and a 70-page published decision issued by the United States Court of Appeals for the Fifth Circuit on June 21, 2018.⁵ Over the course of

¹ Dep’t of Labor, “Improving Investment Advice for Workers and Retirees,” 85 FR 40834 (July 6, 2020), available at <https://www.federalregister.gov/documents/2020/07/07/2020-14261/improving-investment-advice-for-workers-and-retirees>

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

³ FSI will submit specific comments on the by the August 6, 2020 comment period deadline, but offer these comments in advance of specific substantive comments due to the immediate nature of the length of the comment period.

⁴ Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (ERISA), codified as amended at 29 U.S.C. § 1001 *et seq.*, and the Internal Revenue Code, 26 U.S.C. § 4975.

⁵ *Chamber of Commerce v. Dep’t of Labor*, 885 F.3d 360 (5th Cir. 2018).

years, the public has had the benefit of engagement with the Department in this process and a thorough vetting of issues surrounding investment advice fiduciaries.

Given that the Department's proposed class exemption provides needed regulatory alignment with the Securities and Exchange Commission's already effective (as of June 30, 2020) Regulation Best Interest,⁶ timely completion of the Department's initiative is imperative for the financial industry and the investing public. As U.S. Secretary of Labor Eugene Scalia stated this proposed exemption "would give Americans more choices for investment advice arrangements, while protecting the retirement savings of American workers," and "[t]he exemption would add to the tools individuals need to make the right decisions for their financial future." Delay of this important initiative, by extending the comment period, would be ill-advised, especially as Americans work to navigate challenging economic conditions.

Thank you for considering FSI's preliminary comments on the comment period. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel

⁶ Sec. & Exch. Comm'n, Regulation Best Interest: The Broker-Dealer Rule, 17 C.F.R § 240 (2019).