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July 21, 2017

Mr. Timothy D. Hauser
Acting Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Request for Information Regarding Fiduciary Rule and Prohibited Transaction Exemptions –
Request for Extension of Transition Period (RIN 1210-AB82)

Vanguard¹ appreciates the opportunity to comment on the Department of Labor's (the "Department") Request for Information on the revised definition of the term "Fiduciary" and related exemptions (the "Rule"). This letter pertains to the Department's request for comment about extending the January 1, 2018 applicability date of the remaining provisions of the Rule.

Although the new definition and the Impartial Conduct Standards of the Best Interest Contract ("BIC") exemption became applicable on June 9, 2017, we urge the Department to delay the applicability date of all other elements of the Rule by at least 12 to 18 months from the date that the Department publishes its amended Final Rule, including all exemptions, or confirms that there will be no other amendments or exemptions.

Vanguard strongly believes that any advice provided to investors should be in their best interest and anyone who provides investment advice should be held to a fiduciary standard. However, the Rule must be well-crafted to minimize investor confusion, disruption, and cost, and the regulated community will need time to ensure an orderly implementation of the remaining requirements of the Rule. Any further implementation of the exemptions under the Rule must be coordinated with the

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 8,400 DC plans. We also managed 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 \$80 billion in assets under advisement across all client types. We also provide fiduciary investment management to retirement plan participants through the Vanguard Managed Account Program ("VMAP"), 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.

definition of fiduciary investment advice itself. Whether any relief is needed under the BIC exemption, or any of the other exemptions issued under the Rule, depends on whether a communication constitutes investment advice under the Rule.

The Department should apply a consistent delay to the applicability of all remaining aspects of the Rule, including any additional changes to the Rule resulting from this RFI, to address all issues arising from the definition and exemptions. It should also allow financial institutions a realistic time frame to implement and test systems and procedures to comply with the Rule as finalized. Delaying the applicability of all additional aspects of the Rule until the Department has completed its review, plus an appropriate time frame for implementation planning and system updates, would benefit investors and the regulated community. If the Department allows the remaining BIC and other exemption provisions to become effective on January 1, 2018 when the Department's own review of the public comments resulting from this RFI might not be complete, financial institutions will have to revise processes and systems multiple times to comply with the exemption(s), and communicate those changes to their investors.

The result would be a poor experience for investors as they might receive multiple communications from their investment providers, leaving them confused about the nature of their relationships with their investment firms. For example, firms seeking to comply with the BIC exemption would have to send their investors a number of disclosures, including confirming their fiduciary status. If the Department changes the BIC exemption requirements, or changes the definition itself, the same firms might have to send their investors new communications that alter, revoke, or contradict their prior communications. The piecemeal implementation process the Department is considering would potentially create the need to send investors multiple conflicting disclosures that would be difficult for the average investor to understand.

Our experience to date with the Department's decision to allow the definition of investment advice and the Impartial Conduct Standards to become applicable on June 9 has firmly convinced us that further phased implementation and enforcement is not a tenable approach to the Rule. For example, for several weeks after June 9, we received numerous inquiries from plan sponsors and even their consultants about our compliance with aspects of the Rule that are not applicable until 2018, making it clear that even many benefits professionals were having difficulty understanding which aspects of the Rule applied as of June 9 and which did not. A consistent applicability date for the Rule would have avoided this problem.

We appreciate the Department's willingness to consider additional streamlined prohibited transaction exemptions to allow beneficial services to continue, but they are not a substitute for a regulation that defines fiduciary investment advice in a way that comports both with ERISA and investors' reasonable expectations. As we have previously commented, it is our view that the definition of fiduciary investment advice is overly broad.² The Department must take the time to

² See, e.g., Vanguard's July 21, 2015 comment letter to the 2015 Proposed Regulation, available at <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32->

thoroughly review all aspects of the Rule, both the definition itself and the exemptions, rather than trying to meet any internally imposed arbitrary timeline. The Department's FAQ guidance supplementing the Rule confirms our concern about the definition's reach, for example by implying that that encouraging employees to participate in a plan, or increase their contributions, constitutes investment advice.³ We look forward to providing additional feedback to the Department on this critical topic.

Finally, there is no need to rush to apply the remaining provisions of the Rule to protect investors because the Impartial Conduct Standards that are already applicable will provide sufficient protection for them during the 12-18 month implementation period we propose. The Impartial Conduct Standards require that the person providing the 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, particularly that the adviser act in the investor's best interest and charge no more than reasonable compensation, ensure that investors enjoy the economic benefits of the Rule while the Department completes its review and, we hope, amends the Rule or issues additional exemptions. The disclosure and contract (where applicable) requirements do not materially add to investors' protections during this relatively brief period while the Department completes its review. At the same time, the regulated community and our clients will avoid the unnecessary costs of building systems and procedures for the remaining aspects of the Rule that will, in all likelihood, have to be undone or revised.

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Vanguard appreciates the opportunity to submit these comments and would welcome further discussion with the Department. If 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,



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The Vanguard Group, Inc.

2/00682.pdf and our April 17, 2017 comment letter available at <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB79/01370.pdf>.

³ See Question 10 in *Conflict of Interest FAQs (Part II – Rule)* (January 2017) available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/coi-rules-and-exemptions-part-2.pdf>. The Department did not directly state that these activities would constitute fiduciary investment advice if provided by a plan recordkeeper, but that is the implication of the Department's analysis.