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TO:

The Office of Exemption Determinations
Employee Benefits Security Administration
Attention: D-11933
Suite 400
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Submitted Electronically -- EBSA.FiduciaryRuleExamination@dol.gov

RE: RIN 1210-AB82 – Extending the Transition Period by Amending the Applicability Dates of Certain Provisions in the Best Interest Contract Exemption (PTE 2016-01), the Class Exemption for Principal Transactions (PTE 2016-02), and Prohibited Transaction Exemption 84-24 (PTE 84-24)

Ladies and Gentlemen:

The Association for Advanced Life Underwriting (“AALU”) appreciates the opportunity to submit comments on the Department of Labor’s (“Department”) proposal (“Proposal”) to extend the January 1, 2018 applicability date of certain provisions in the Best Interest Contract Exemption (“BIC Exemption”); the Class Exemption for Principal Transactions in Certain Assets between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs; and Prohibited Transaction Exemption 84-24 (“PTE 84-24”) (collectively, the “Transition Period”).

We applaud the Department’s decision to propose extending the Transition Period to July 1, 2019, an extension consistent with our recommendation to the Department in our July 21, 2017 letter responding to the Department’s Request for Information (“RFI”).¹ Extending the Transition Period is essential to avoid imposing further costs and confusion on retirement savers. The June 9, 2017 applicability date of the major portions of the regulation redefining fiduciary investment advice and its related prohibited transaction exemptions (collectively, the “Fiduciary Rule” or “Rule”)² has resulted in higher costs and reduced access to investment advice and investment products for retirement savers.

¹ 82 Fed. Reg. 31,278 (Jul. 6, 2017).
² 81 Fed. Reg. 20,945 – 21,221 (Apr. 8, 2016).



To implement another round of significant change just seven months later on January 1, 2018, when the Department is in the process of reviewing the Rule and may well eliminate, replace, or otherwise materially change these very burdensome new requirements scheduled to take effect, would further harm the retirement savers the Rule was intended to help.

Put simply, it would be irresponsible to subject retirement savers to further costs by implementing provisions the Department itself has indicated are likely to change. In the Preamble to the Proposal, the Department stated that it "... anticipates it will propose in the near future a new and more streamlined class exemption,"³ an action that likely would fundamentally change the regulatory environment that would result from the imposition of the "full" BIC Exemption and the revised PTE 84-24.

Not only would a failure to extend the Transition Period by at least 18 months seriously harm retirement savers, but there simply would not be enough time for the Department to conclude its review of the Fiduciary Rule ordered by President Trump;⁴ or to properly coordinate with other regulators, including state insurance commissioners, the Securities and Exchange Commission ("SEC"), the Financial Industry Regulatory Authority ("FINRA"), and other relevant Federal and state regulatory entities.

As the leading organization of life insurance professionals who are a trusted voice on policy issues impacting Americans' financial security and retirement savings, AALU consistently informed the Department of the very real negative affects the Fiduciary Rule would have on retirement savers. Our 2,300 members are primarily engaged in providing life insurance planning solutions for individuals, families, and businesses nationwide—they have always acted in the best interest of their clients, and are doing so now to the best of their abilities under the new requirements of the Fiduciary Rule. Our members provide retirement savers with investment and insurance products that build and guarantee retirement income, protecting their retirement savings against a variety of risks that threaten their retirement security, from market downturns to outliving savings. Unfortunately, since June 9th, our members have found it harder to provide access to the very insurance products retirement savers most need. This may have been an unintended consequence, but its harmful effects are real, and must be reversed. The extension of the Transition Period as proposed will provide needed stability and regulatory certainty, reducing the current instability and uncertainty that is negatively affecting advice regarding such products.

We correctly explained that the Department's rosy academic predictions made in April 2016 when promulgating the Fiduciary Rule were incorrect, significantly understating the costs facing retirement savers while overestimating the benefits. Facts—the empirical data received by the Department in response to the RFI—clearly demonstrate the harm the Rule has caused. Extending the Transition Period is essential for the Department to thoroughly and honestly review this data, and to make the changes to the Rule we called for in our August 8, 2017 letter responding to the RFI.

Our comments here support the proposed extension of the Transition Period by at least 18 months, and provide additional comments on issues requested by the Department.

AALU Comments on the Form of the Transition Period Extension

The Proposal provides for a "date certain" extension of the Transition Period—the January 1, 2018 applicability date would be extended to July 1, 2019. The Department discusses alternatives to this date certain approach, and asks for comments on each.

³ 82 Fed. Reg. 41,371.

⁴ See, President's Memorandum, 82 Fed. Reg. 9675 (Feb 7, 2017).



AALU believes the Department should craft an extension that serves two primary objectives: first, the Transition Period should be no less than 18 months to allow enough time to review and rescind or amend the Rule following proper coordination with other regulators; and second, the Transition Period must provide a clearly defined duration to ensure stability for retirement savers and an orderly transition to a new regulatory environment. These objectives are central to preventing further harm while ensuring a thorough and honest review of the Rule.

Other alternatives to the date certain approach considered by the Department include:

- a Transition Period end date based on a contingent event, such as the completion of the Department’s review of the Rule ordered by the President;
- a “tiered approach” in which the Transition Period ends either on a date certain or on the completion of a contingent event; or
- a Transition Period available only if new conditions in addition to those of the current Transition Period exemptions are adopted, such as the use of “clean shares.”

AALU strongly believes that the date certain approach best serves retirement savers. The deferred elements of the BIC Exemption and PTE 84-24 would impose massive new costs and extremely burdensome requirements, resulting in fundamental changes for retirement savers that will further reduce access to advice and investment products. Unlike the reasonable fee requirement of the Transition BIC Exemption, which protects retirement investors while permitting some variation in fees that are inherent in the wide array of financial products and services available in the marketplace, the “full” BIC Exemption would impose an artificial level fee requirement that severely curtails the ability of retirement investors to access insurance products and other investments that are designed for a commission-based compensation model.

To comply with the “full” BIC Exemption will require fundamental changes in investment products and services that will take significant time to implement, and cause significant changes and confusion for retirement investors. Given the “lead” time required for compliance with these changes, only a date certain approach provides the necessary stability for retirement investors and their financial professionals by removing unnecessary and harmful regulatory uncertainty.

The contingent event approach and the tiered approach both introduce too much uncertainty. Not only would the compliance deadline be vague and undefined, based on when some future event may happen (and accurately predicting when a Federal Agency may complete an action is a notoriously difficult thing to achieve), but uncertainty would also result from which contingent act is selected as the basis for the end of the Transition Period. For example, if the Transition Period were to end when the Department completes the review of the Rule ordered by the President, not only is the timing uncertain, but there would be no time for the Department to implement any changes resulting from that review. This would result in the imposition of the deferred provisions for a short period, only to be changed by new regulations some months later, the very thing the Department seeks to avoid by proposing to extend the Transition Period.

Uncertainty and harm would also result from imposing new conditions in an extended Transition Period. The process of identifying, evaluating, and proposing those new conditions would itself be a new regulatory action. The Proposal does not specify what those conditions might be, other than a vague reference to clean shares. A detailed set of proposed conditions would have to be published and put out for comment by the Department, a process that cannot be completed by January 1, 2018. Further, even if there were a detailed proposal related to clean shares, this would not address the issues presented by investments other than mutual funds, including the insurance products retirement investors rely on to safeguard and plan for their retirements.



Accordingly, we recommend that the Department retain the date certain approach in the Proposal, with a period of no less than 18 months.

Extending the Enforcement Policy in FAB 2017-02

AALU also strongly urges the Department to extend the enforcement policy adopted in Field Assistance Bulletin 2017-02 from January 1, 2018 until July 1, 2019. In footnote five of the Proposal, the Department noted that it had not yet made a decision to extend the enforcement policy currently in effect beyond January—we believe this is essential to protect retirement savers.

The parts of the Fiduciary Rule that became applicable on June 9th make sweeping changes affecting decades of financial regulation. The Rule was imposed without adequate coordination with the SEC and insurance regulators, and, as a result, contains many provisions that are unclear, and on which the Department has provided little or no guidance. Financial institutions have arrived in good faith at different interpretations of various provisions, and have adopted different compliance requirements as a result. This is causing significant confusion for retirement investors, who find that different financial professionals have different limitations with respect to similar products and services. This will not change during the extended Transition Period, as the Fiduciary Rule will remain the same until the Department takes further action.

The requirements of good faith and diligent effort in the enforcement policy provide needed flexibility for financial professionals to act in the best interest of retirement investors, including training and the refinement of policies and procedures to comply with the Rule. We ask that the FAB's policies be extended to July 1, 2019.

The Proposed Extension Will Help, Not Harm, Retirement Savers

By avoiding unnecessary regulatory cost and confusion, the Proposal will benefit retirement savers. As the Department noted in establishing the Transition Period, the Impartial Conduct Standards, which became applicable on June 9th, provide the vast majority of the benefits it predicted. In April, the Department concluded that, "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," and that, "...affected investors will generally receive the full gains due to the fiduciary rulemaking."⁵

As we have previously explained in our prior letters, our members have been intensely focused on complying with the Impartial Conduct Standards. We and other industry groups have worked hard to assist financial professionals in understanding the Rule and complying with its requirements. Our members continue to devote significant amounts of time and money to training, review, oversight, and compliance, and will do so through the extended Transition Period.⁶

⁵ 82 Fed. Reg. 16,902 at 16,907 and 16,909 respectively (Apr. 7, 2017).

⁶ For AALU's comments to the Department since the February 3, 2017 White House Memorandum, see [Letter from David J. Stertzer, Chief Executive Officer, AALU, to Office of Regulations and Interpretations, Employee Benefits Security Administration, DOL](#) (March 17, 2017); see also [Letter from David J. Stertzer, Chief Executive Officer, AALU, to Office of Regulations and Interpretations, Employee Benefits Security Administration, DOL](#) (April 17, 2017); see also [Letter from David J. Stertzer, Chief Executive Officer, AALU, to Office of Exemption Determinations, Employee Benefits Security Administration, DOL](#) (August 7, 2017).



Conclusion

Our members are committed to acting in the best interest of retirement savers. Despite their best efforts, however, retirement savers will be harmed unless the Transition Period is extended as the Department has proposed. Rather than benefiting from a period of stability in which the Department and other regulators can fix the many problems with the Rule, either by rescinding it or by materially modifying its requirements, they will further lose access to insurance professionals and products.

We would be happy to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Stertz", is written over a faint, light-colored watermark of the same signature.

David J. Stertz
Chief Executive Officer
AALU