

September 15, 2017

The Office of Exemption Determinations
Employee Benefits Security Administration
Attention: D-11712, 11713, 11850
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:

Edward D. Jones and Co., L.P. ("Edward Jones") appreciates the opportunity to submit comments on the Department of Labor's ("Department") Proposal (the "Proposal") to extend until July 1, 2019 the applicability date of certain provisions of the Best Interest Contract Exemption (the "BIC Exemption"), the Class Exemption for Principal Transactions ("Principal Transaction Exemption"), and Prohibited Transaction Exemption 84-24 ("PTE 84-24") (collectively, the "Transition Period").

We are very pleased that the Proposal supports a position similar to our recommendation in our July 21, 2017 response to the Department's Request for Information ("RFI"),¹ and we reiterate our request that the Final Rule extend the Transition period to the later of July 1, 2019 or one year after the promulgation of any final amendments to the Fiduciary Rule or associated exemptions ("Rule"). This approach will provide time for a thorough and coordinated revision of the Rule, as well as an orderly transition to the new regulatory environment.

Extending the Transition Period is Vital to Protect Retirement Investors

We strongly support the Proposal's extension of the Transition Period to July 1, 2019 because doing so is in the best interest of retirement savers. The

¹ 82 Fed. Reg. 31,278 (July 6, 2017).

extension will provide a needed period of regulatory stability during which the Department may complete its review of the Rule ordered by President Trump,² and coordinate closely with the Securities and Exchange Commission (“SEC”), the Financial Industry Regulatory Authority (“FINRA”), state insurance commissioners and other regulatory entities to develop a final Rule that best serves all retirement savers. There simply is not enough time for the Department to proceed in a thorough and thoughtful manner unless the Transition Period is extended. As the Department acknowledged in the Preamble to the Proposal, “neither [a new exemption] nor any other changes or modifications to the Fiduciary Rule and PTEs, if any, realistically could be implemented by the current January 1, 2018, applicability date. Nor would that timeframe accommodate the Department’s desire to coordinate with the SEC in the development of any such proposal or changes.”³

Further, a failure to extend the Transition Period for at least 18 months will impose significant costs, confusion and service disruptions on retirement investors. Retirement investors have already incurred substantial expense and confusion as a result of the June 9, 2017 applicability date. A failure to extend this Transition Period will result in unnecessary additional rounds of regulatory change, imposing the most onerous and least beneficial requirements of the Rule on January 1, 2018—just seven months after the first round of change—only to see these requirements likely change again several months later. It would be detrimental to the interests of retirement savers for the Department to allow provisions to become applicable that the Department already indicated are likely be significantly modified or superseded in the coming months.⁴

The Department Should Extend its Enforcement Policy through the End of the Transition Period

The Department also requested comment on extending the enforcement policy adopted in Field Assistance Bulletin 2017-02 from January 1, 2018 until July 1, 2019. We strongly urge the Department to do so.

The scope of the Fiduciary Rule is so broad, and its provisions so complex, that extending the current enforcement policy is necessary. There remain significant ambiguities and questions regarding the Rule, which we addressed in our second letter responding to the RFI dated August 7, 2017 and have attached to this

² See President's Memorandum, 82 Fed. Reg. 9675 (Feb. 7, 2012).

³ 82 Fed. Reg. 41,365 at 41,371 (Aug. 31, 2017).

⁴ See, e.g. “The Department also anticipates it will propose in the near future a new and more streamlined class exemption...” 82 Fed. Reg. 41,371.

12555 Manchester Road
St. Louis, MO 63131-3710
314-515-2000
www.edwardjones.com

Edward Jones

letter. Until those ambiguities are resolved, the non-enforcement policy should be extended by the Department.

Conclusion:

Edward Jones appreciates the opportunity to provide comments in response to the Proposal. We urge the Department to extend the Transition Period as we recommend, and to work with the SEC and FINRA to make meaningful changes to Rule that promote investor protection, preserve investor choice and options, and ensure investors have access to meaningfully assistance and guidance from financial professionals.

If you have any questions regarding the comments contained in this letter please contact me at 314-515-9711.

Sincerely,



Jesse Hill

Principal – Government and Regulatory Relations

Attachment

August 7, 2017

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

Submitted Electronically -- EBSA.FiduciaryRuleExamination@dol.gov

**Re: RIN 1210-AB82 – Request for Information Regarding the Fiduciary Rule
and Prohibited Transaction Exemptions**

Ladies and Gentlemen:

Edward D. Jones and Co., L.P. ("Edward Jones") appreciates the opportunity to respond to the Request for Information ("RFI") regarding the Fiduciary Rule and its associated Prohibited Transaction Exemptions ("Fiduciary Rule" or "Rule").¹ This comment letter addresses the remaining questions in the RFI not already addressed in our previous letter of July 21, 2017. We also urge the DOL to review and consider the comments submitted by the firm on July 21, 2015 and April 17, 2017, which are attached.

We applaud the DOL for issuing the RFI, and for conducting a thorough review of the Fiduciary Rule. President Trump's Memorandum raises important questions that need to be thoroughly analyzed by the DOL to assess the impact of the Rule on retirement savers and their access to investment advice and information.² As Secretary Acosta recently stated "Washington should regulate only when necessary. Limiting the scope of government protects space for people to make their own judgments about what is best for their families."³ We commend the Trump Administration and Secretary Acosta for focusing on the need to empower investors to save for retirement.

We consistently have offered comments throughout the regulatory process highlighting the practical challenges facing retirement savers on account of the Rule to help the DOL understand how to craft a revised Rule that best serves the interests of these investors. We again commend to the DOL an Oliver Wyman

¹ 82 Fed. Reg. 31,278 (Jul. 6, 2017).

² See, President's Memorandum, 82 Fed. Reg. 9,675 (Feb 7, 2017).

³ See, 'Fiduciary' Rule to Take Effect June 9 With No Further Delay by Secretary Alex Acosta, Wall Street Journal (May 22, 2017).

Study titled "The Role of Financial Advisors in the U.S. Retirement Market"⁴ demonstrating the important role financial advisors play in helping investors save for retirement security and highlighting the need for meaningful changes to the rule to preserve investor access to advice. We previously referenced this study in our July 21, 2015 comment letter. The Oliver Wyman Study demonstrates that advised individuals, segmented by age and income, have a minimum of 25% more assets than non-advised individuals and, in the case of individuals 65 or older with \$100,000 or less in annual income, advised individuals have an average of 113% more assets than non-advised investors. However well-intended the DOL's efforts to date, we continue to believe the Rule must be significantly modified to preserve retirement savers choices and access to quality advice. Our comments below are directed to improving the Rule to increase retirement security for all retirement savers.

The Fiduciary Rule Limits Investor's Retirement Savings Options and Access to Advice

Question 3 in the RFI asks whether the Rule is "appropriately balance[ed]" or whether it is limiting access to "a wide range of products that can meet each investor's particular needs."⁵ Unfortunately, the Rule does not appropriately balance its requirements with the needs of investors and reduces access to meaningful advice that would otherwise help investors reach their long-term goals.

The reality is that the rush to implement the Rule has not provided the time necessary for the DOL, the Securities and Exchange Commission ("SEC"), the Financial Industry Regulatory Authority ("FINRA") and other regulators to address the Rule's problems. The challenges associated with implementation will be made much worse if the additional conditions of the BIC Exemption take effect at the end of the Transition Period. The restrictions imposed by the additional conditions of the BIC Exemption after January 1, 2018 will further limit solutions available to investors and choice in how to pay for these services.

Investors are best served by having access to a broad array of different investment solutions. However, the conditions of the BIC Exemption that have not yet taken effect are very rigid and limit investor choice and access to quality advice. In fact, the BIC Exemption conditions that have not yet taken effect do nothing to address the quality of the advice provided—the already applicable best interest requirement of the Impartial Conduct Standards does this. Instead, the additional conditions of the BIC Exemption focus on how an advisor is paid

⁴ See, Oliver Wyman, "Role of Financial Advisors in the U.S. Retirement Market", July 10, 2015.

⁵ See, 82 Fed. Reg. at 31,279.

mandating the use of the ill-defined "neutral factors" as well as complex and ineffective disclosures - the quality of the advice is not even considered. Without changes, the BIC Exemption will result in increased costs and limited product and service offerings for retirement savers with no apparent benefit.

Retirement savers will best be served by replacing the additional conditions of the BIC Exemption with a streamlined exemption that comports with current and future SEC and FINRA actions. We urge the DOL to state in such an exemption that compliance with an SEC or FINRA standards is compliant with the best interest requirement of the Impartial Conduct Standards. This would ensure there is no conflict between simultaneously applicable standards.

In the RFI, the DOL also asks several questions about new market innovations in investment product design and client service models that might form the basis for new prohibited transaction exemptions, including "clean" shares, "T" shares, and fee-based annuities.⁶ As we provided in our prior attached comment letter, the challenges presented by the conditions in the BIC exemption have resulted in the mutual fund industry considering the development of these new share classes.

Product-specific exemptions for market innovations, such as "clean" shares or T-shares are of limited utility as they only provide a narrow snapshot of the current market environment. New ideas would require new regulatory action to develop new exemptions, an inefficient way to regulate a dynamic system in which new and better ideas to serve retirement investors may emerge at any time. Rather than attempting to favor certain investment solutions over others in a rapidly evolving marketplace, we urge the DOL to craft a principle-based exemption that will empower investors and promote marketplace innovation to ensure the greatest choice in retirement savings alternatives.

The Impartial Conduct Standards Provide the Protections Intended by the DOL

The DOL determined in its April 7, 2017 regulation establishing the Transition Period that the vast majority of the Rule's benefits to retirement investors is derived from compliance with the Impartial Conduct Standards.⁷ The DOL asks in the RFI for an assessment of the impact of the Impartial Conduct Standards, and whether additional incentives are necessary for compliance with their requirements.⁸

⁶ See, RFI Questions 2, 7, 8, and 9.

⁷ See, 82 Fed. Reg. 16,907 and 16,909-10 (April 7, 2017).

⁸ See, RFI Questions 5 and 6.

As the DOL previously stated, "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 ("Regulatory Impact Analysis") for the transition period will remain intact."⁹ The Impartial Conduct Standards serve the DOL's purpose of protecting investors without imposing the additional burdensome and complex requirements mandated by the remaining BIC Exemption conditions. For example, the complex disclosure requirements that become applicable on January 1, 2018 would require a level of detail not currently available in the industry.

We believe the Impartial Conduct Standards are consistent with the DOL's intent and render the incremental "benefits" of the additional conditions of the BIC Exemption virtually non-existent. The DOL should eliminate all other conditions of the BIC exemption, including the ill-defined "neutral factors" and complex disclosure requirements. We anticipate that this would also provide the DOL with the opportunity to coordinate with the SEC and FINRA on developing a workable, uniform best interest standard based upon agreed principles.

The DOL Should Meaningfully Coordinate with the SEC and FINRA on a Uniform Best Interest Standard

In RFI Question 11, the DOL asks whether a streamlined exemption could coordinate with fiduciary standards developed by the SEC, FINRA and other regulators.¹⁰ This is a very important issue for retirement savers, because securities rules and the Fiduciary Rule will apply simultaneously to many advisors. Edward Jones strongly believes that the DOL's actions in revising the Rule should be informed by, and coordinated with standards adopted by the SEC and FINRA.

It is clearly not workable for investors to have varying standards of care apply to their retirement and taxable accounts. The current Rule was not adequately coordinated with other regulators, resulting in conflicting regulatory structures, and this has created unnecessary costs and confusion for investors.

The SEC, FINRA, state insurance commissioners and other regulators have considerable expertise and resources focused on promoting investor protection through rulemaking, guidance and ongoing oversight of the financial services industry. The DOL should coordinate with the SEC and FINRA to develop a uniform best interest standard for investors that applies to all retirement and taxable accounts.

⁹ See, 82 Fed. Reg. 16907 (April 7, 2017).

¹⁰ See, 82 Fed. Reg. at 31,280.

We commend to the DOL SEC Chair Clayton's recent remarks that it would be "extremely disappointing" if a best interest standard reduced choice for investors. The standard should preserve investor options to a wide range of retirement solutions and choice in how to pay for these services. In addition, SEC Commissioner Michael Piwowar's recently called for the DOL to "redouble its efforts to work with the Commission and its expert staff, who may bring to bear our decades of experience in enforcing multiple disclosure-based regimes."¹¹

Secretary Acosta and Chairman Clayton have publicly indicated that the DOL and SEC wish to coordinate their respective efforts to develop a best interest standard. We commend the Secretary and Chairman for recognizing the need to provide consistency and clarity, but stress that it is imperative for the DOL to provide a material delay of the January 1, 2018 applicability date to allow for a meaningful opportunity to coordinate with the SEC and FINRA.

The Grandfather Provision is Important and Should be Improved to Better Serve Investors

The DOL appropriately included a grandfathering provision in the Rule to permit investors to hold existing IRA assets. While the inclusion of a grandfather provision was beneficial and necessary for existing retirement savers, the DOL has imposed overly prescriptive requirements that significantly undermine the utility of this provision.

We urge the DOL to consider a broader grandfather provision that would fully-exempt from the rule all investments in accounts entered into prior to and after June 9 and prior to January 1, 2018 or any delayed applicability date. The grandfather provision should allow continued ongoing contributions of new money into the account and unfettered ongoing advice, including on exchanging mutual funds, during the life of the account. We believe these changes to the grandfather provision will minimize investor confusion and enhance the utility of the grandfather provision to better serve the interests of investors.

Advice Regarding Contributions Should Not Be Fiduciary Advice Under the Rule

In the RFI, the DOL asks "whether recommendations to make or increase contributions should be excluded from the definition of investment advice?"¹²

¹¹ See, Comment Letter in Response to the DOL's "Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions by Commissioner Michael S. Piwowar (July 25, 2017).

¹² See, RFI Question 14.

Recommendations regarding whether and how much to contribute to qualified accounts should be excluded from the definition of fiduciary advice. We commend the DOL for the August 4, 2017 FAQ which indicates that recommendations to make or increase contributions are not fiduciary acts, but in light of prior contrary guidance from DOL request further clarification on this point. For example, investors who are comprehensively planning for retirement security and have both qualified and non-qualified accounts may not receive the necessary advice because the Rule is unclear whether the new guidance would apply to recommendations to contribute to the non-qualified account versus the qualified account. This concern is not addressed by the examples in the guidance from the DOL and should be clarified.

The Rule should also be clarified to exclude advice related to investment of RMD proceeds. The Fiduciary Rule currently applies to advice to take a distribution from a retirement account and to invest the proceeds. However, this should not apply in the case of a Required Minimum Distribution ("RMD"). The law requires an RMD; the advisor is not recommending the distribution. The position taken by the DOL in guidance issued in January (that the Rule applies to advice to invest the proceeds even though no recommendation was made to take the distribution) leads to the odd result that a recommendation on how to invest the proceeds of an RMD is subject to the Rule if the recommendation precedes the distribution, but not if the recommendation is made after the distribution occurs.¹³ This illustrates that the DOL's guidance is "form over substance" and will serve only to confuse retirement investors, potentially limiting the advice they may receive.

The DOL Needs to Consider the Impact on Retirement Savers of Concerns Raised in our July 21, 2015 and April 17, 2017 Comment Letters that are not Addressed in the Rule.

We have attached the firm's July 21, 2015 and April 17, 2017 comment letters which include a more detailed discussion of the following concerns:

- The DOL's narrow definition of "education" and overly-broad definition of "investment advice" will result in loss of guidance and investors at a time when retirement savings rates are already troublingly low. Financial advisors should be allowed to provide specific investment examples that would give an investor meaningful and useful information without giving rise to a fiduciary relationship. We recommend the DOL consider what other information could be provided to investors about specific investments that would meet the DOL's objective of mitigating conflicts of interest without rendering these important conversations meaningless to investors.

¹³ See, Conflict of Interest FAQs (Part II -Rule), Q4., January 2017.

- The lack of a workable "seller's carve-out" effectively prohibits financial advisors from marketing and promoting retirement services to investors. The DOL attempted to preserve this exception through the so-called "hire me" exception, however the rule makes clear that if a financial advisor provides examples of investments and/or retirement saving strategies this activity would be considered fiduciary advice, likely triggering a prohibited transaction. Investors must retain the ability to have open dialogue with their financial advisors about the products and services that are available to meet their retirement savings needs.
- The rule's rollover provisions will make it more difficult for investors to receive meaningful guidance from financial advisors about the options available when changing jobs, heightening the risk that investors will cash out, and not use these assets to meet their long-term retirement savings needs.
- The rule will significantly limit the ability of small businesses to establish and maintain retirement plans by curtailing the ability of financial advisors to provide necessary education and guidance.

We believe all of these concerns need to be addressed by the DOL as part of the ongoing review of the rule.

Conclusion:

Edward Jones appreciates the opportunity to provide comments in response to the RFI. We are committed to working with the DOL to develop a final rule that is in the best interest of investors. The changes we recommend here will significantly improve the quality, affordability and accessibility of advice for retirement savers.

If you have any questions regarding the comments contained in this letter please contact me at 314-515-9711.

Sincerely,



Jesse Hill
Principal – Government and Regulatory Relations