

September 13, 2017

Office of Exemption Determinations
Employee Benefits Security Administration
Attn: D-11712, 11713, 11850
U.S. Department of Labor
200 Constitution Avenue NW
Suite 400
Washington, DC 20210

**Re: Extension of Transition Period and Delay of Applicability Date
RIN 1210-AB82**

Dear Madam or Sir:

The American Retirement Association (“ARA”) is writing in response to a request for comment with respect to the extending the special transition period under the Best Interest Contract Exemption (and related exemptions). As explained below, and consistent with our earlier comments, we believe a tiered approach to the extension will reduce unnecessary costs and burdens that could otherwise limit the availability of financial advice to America’s investors.

The ARA appreciates the thought, time and effort the Department has put into this initiative. We agree that investment advice should be impartial, free from conflicts of interest and in the recipient’s best interest. At the same time, it is important to ensure that all Americans continue to have access to workplace savings arrangements and investment professionals to help guide them through the process of preparing for and living out one’s retirement years.

The ARA is a national organization of more than 20,000 members who provide consulting and administrative services to American workers, savers and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys. The ARA is the coordinating entity for its four underlying affiliate organizations, the American Society of Pension Professionals and Actuaries (“ASPPA”), the National Association of Plan Advisors (“NAPA”), the National Tax-deferred Savings Association (“NTSA”) and the ASPPA College of Pension Actuaries (“ACOPA”). ARA members have diverse perspectives, but are united in their common dedication to America’s private retirement system.

Recommendation

- **The ARA recommends** using a “tiered” approach to determine the applicability date for the delayed provisions of the Best Interest Contract Exemption, the Principal Transaction Exemption, and amendments to PTE 84-24 (the “Delayed Guidance”). Under

this approach, the Delayed Guidance would become applicable as of the later of July 1, 2019, or a date that is at least 18 months from the date a revised exemption (or rule) is promulgated.

Background

The Fiduciary Regulation was published in final form on April 8, 2016, with an effective date of June 7, 2016, and an applicability date of April 10, 2017. On February 3, 2017, the President directed the Department to review the Fiduciary Regulation to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice.

On March 2, 2017, the Department issued a proposed rule to extend the applicability date by 60 days. On April 7, 2017, the Department issued a final regulation extending the applicability date 60 days until June 9, 2017. The April 7, 2016, guidance also provided for a transition period for during which satisfaction of the Impartial Conduct Standards will be the only requirement to gain exemptive relief. On August 31, 2017, the Department published a proposal to extend the transition period an additional 18 months until July 1, 2018, and asked for comment on the same.

Discussion

The Department has indicated that it will review the Fiduciary Regulation and related examinations, taking a "...hard look at any potential undue burden." The proposal goes on to note, "Whether and to what extent, there will be changes to the Fiduciary Rule and PTEs as a result of this reexamination is unknown until its completion." It is obvious the review will take time and the proposal acknowledges that implementation of any new alternative exemptions or other changes to the Fiduciary Regulation by the current January 1, 2018, applicability date would not be realistic.

The financial services industry has been and will continue to be challenged by shifting standards under the Regulation and related exemptions. Having to undertake potentially significant system modifications when further change is likely is an unnecessary and costly burden. It can easily be avoided by extending the applicability date while the Department completes its review. This is particularly critical because many of the financial services firms affected are small businesses who can least afford the expense and disruption that would be caused by rapidly changing compliance standards.

The Department proposes extending the applicability date until July 1, 2019. Comment was requested, however, on whether it would be beneficial to consider a tiered approach as compared to a time certain deadline. The ARA believes a tiered approach under which the Delayed Guidance would become applicable as of the later of January 1, 2019, or a date that is at least 18 months from the date a revised exemption (or rule) is promulgated would be the preferred approach for several reasons.

The Department is desirous of further coordination with the SEC. It is also considering potential alternative exemptions such as the “levelized fee exemption” outlined in ARA’s comment letter of July 18, 2017. Needless to say, it will take some time to give thoughtful consideration to the comments that have already been submitted (with more sure to follow). It would be difficult to say with certainty when this process will conclude. For this reason, it would be better to have the tiered approach so that an extension is “built-in” without the need for further rulemaking.

In addition, tying the “event” in the tiered approach to the date when a revised exemption (or rule) is promulgated will give financial institutions and advisers the assurance that there will be sufficient time to update compliance systems when the rules are final. We believe that an 18-month period will allow for an orderly and cost effective process to implement any changes that may be made to the Fiduciary Regulation or related exemptions.

Finally, ARA would strongly recommend continuing the temporary enforcement policy announced in Field Assistance Bulletin 2017-02. This would be consistent with the Department’s announced intention to assist (rather than citing violations and imposing penalties on) plans, plan fiduciaries, financial institutions, and others who are working diligently and in good faith to understand and come into compliance with the fiduciary duty rule and exemptions. Further, if a Financial Institution acts in bad faith, the Department could pursue enforcement action. While the review is ongoing, the temporary enforcement policy strikes the proper balance.

The ARA looks forward to working with the Department to provide input throughout this process of review. We have long supported the idea of putting plan participants, beneficiaries, and IRA owners’ interests’ front and center under a “best interest” standard. We would welcome the opportunity to discuss these comments further with you. Please contact Craig Hoffman, ARA General Counsel, at CHoffman@USARetirement.org if you have any questions. Thank you for your time and consideration.

Sincerely,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO
American Retirement Association

/s/
Robert Richter, Esq., APM
President
American Retirement Association

/s/
Craig P. Hoffman, Esq., APM
General Counsel
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/s/
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