remove ''MPO(s)'' with and add in its place ''MPO'' wherever it occurs.

■ 13. Amend § 450.326 as follows:

■ a. Revise paragraph (a); and

■ b. In paragraphs (b), (j), and (p), remove ''MPO(s)'' and add in its place ''MPO'' wherever it occurs.

The revision reads as follows:

§ 450.326 Development and content of the transportation improvement program (TIP).

(a) The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall reflect the investment priorities established in the current metropolitan transportation plan and shall cover a period of no less than 4 years, be updated at least every 4 years, and be approved by the MPO and the Governor. However, if the TIP covers more than 4 years, the FHWA and the FTA will consider the projects in the additional years as informational. The MPO may update the TIP more frequently, but the cycle for updating the TIP must be compatible with the STIP development and approval process. The TIP expires when the FHWA/FTA approval of the STIP expires. Copies of any updated or revised TIPs must be provided to the FHWA and the FTA. In nonattainment and maintenance areas subject to transportation conformity requirements, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any updated or amended TIP, in accordance with the Clean Air Act requirements and the EPA's transportation conformity regulations (40 CFR part 93, subpart A).

* * * * *

§ 450.328 [Amended]

■ 14. Amend § 450.328 by removing ''MPO(s)'' and adding in its place ''MPO'' wherever it occurs.

§ 450.330 [Amended]

■ 15. Amend § 450.330 in paragraphs (a) and (c) by removing ''MPO(s)'' and adding in its place ''MPO'' wherever it occurs.

§ 450.332 [Amended]

■ 16. Amend § 450.332 in paragraphs (b) and (c) by removing ''MPO(s)'' and adding in its place ''MPO'' wherever it occurs.

§ 450.334 [Amended]

■ 17. Amend § 450.334 as follows:

■ a. In paragraph (a), remove ''MPO(s)'' and add in its place ''MPO''; and

■ b. In paragraph (c), remove ''MPO(s)'' and add in its place ''MPO's''.

§ 450.336 [Amended]

■ 18. Amend § 450.336 in paragraphs (b)(1)(i) and (ii) and (b)(2) by removing ''MPO(s)'' and adding in its place ''MPO'' wherever it occurs.

§ 450.340 [Amended]

■ 19. Amend § 450.340 as follows:

■ a. In paragraph (a), remove ''or MPOs'' wherever it occurs; and

■ b. Remove paragraph (h).

Title 49—Transportation

PART 613—METROPOLITAN AND STATEWIDE AND NONMETROPOLITAN PLANNING

■ 20. The authority citation for part 613 is revised to read as follows:

Authority: 23 U.S.C. 134, 135, and 217(g); 42 U.S.C. 3334, 4233, 4332, 7410 *et seq.;* 49 U.S.C. 5303–5306, 5323(k); and 49 CFR 1.91(a) and 21.7(a).

[FR Doc. 2017–25762 Filed 11–28–17; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

[Application Number D–11712; D–11713; D–11850]

ZRIN 1210–ZA27

18-Month Extension of Transition Period and Delay of Applicability Dates; Best Interest Contract Exemption (PTE 2016–01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016–02); Prohibited Transaction Exemption 84–24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters (PTE 84–24)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Extension of the transition period for PTE amendments.

SUMMARY: This document extends the special transition period under sections II and IX of the Best Interest Contract Exemption and section VII of the Class Exemption for Principal Transactions in Certain Assets between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs for 18 months. This document also delays the applicability of certain amendments to Prohibited Transaction Exemption 84–24 for the same period. The primary purpose of the amendments is to give the Department of Labor the time necessary to consider public comments under the criteria set forth in the Presidential Memorandum of February 3, 2017, including whether possible changes and alternatives to these exemptions would be appropriate in light of the current comment record and potential input from, and action by, the Securities and Exchange Commission and state insurance commissioners. The Department is granting the delay because of its concern that, without a delay in the applicability dates, consumers may face significant confusion, and regulated parties may incur undue expense to comply with conditions or requirements that the Department ultimately determines to revise or repeal. The former transition period was from June 9, 2017, to January 1, 2018. The new transition period ends on July 1, 2019, rather than on January 1, 2018. The amendments to these exemptions affect participants and beneficiaries of plans, IRA owners and fiduciaries with respect to such plans and IRAs.

DATES: This document extends the special transition period under sections II and IX of the Best Interest Contract Exemption and section VII of the Class Exemption for Principal Transactions in Certain Assets between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (82 FR 16902) to July 1, 2019, and delays the applicability of certain amendments to Prohibited Transaction Exemption 84–24 from January 1, 2018 (82 FR 16902) until July 1, 2019. See Section G of the **SUPPLEMENTARY INFORMATION** section for a list of dates for the amendments to the prohibited transaction exemptions.

FOR FURTHER INFORMATION CONTACT: Brian Shiker or Susan Wilker, telephone (202) 693–8824, Office of Exemption Determinations, Employee Benefits Security Administration.

SUPPLEMENTARY INFORMATION:

A. Procedural Background

ERISA & the 1975 Regulation

Section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), in relevant part provides that a person is a fiduciary with respect to a plan to the extent he or she renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so. Section 4975(e)(3)(B) of the Internal Revenue Code (''Code'') has a parallel provision that defines a fiduciary of a plan (including an individual retirement account or individual retirement annuity (IRA)). The Department of Labor (''the Department'') in 1975 issued a regulation establishing a five-part test under this section of ERISA. See 29 CFR 2510.3–21(c)(1) (2015).[1] The Department's 1975 regulation also applied to the definition of fiduciary in the Code.

The New Fiduciary Rule & Related Exemptions

On April 8, 2016, the Department replaced the 1975 regulation with a new regulatory definition (the ''Fiduciary Rule''). The Fiduciary Rule defines who is a ''fiduciary'' of an employee benefit plan under section 3(21)(A)(ii) of ERISA as a result of giving investment advice to a plan or its participants or beneficiaries for a fee or other compensation. The Fiduciary Rule also applies to the definition of a ''fiduciary'' of a plan in the Code pursuant to Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1, 92 Stat. 3790. The Fiduciary Rule treats persons who provide investment advice or recommendations for a fee or other compensation with respect to assets of a plan or IRA as fiduciaries in a wider array of advice relationships than was true under the 1975 regulation. On the same date, the Department published two new administrative class exemptions from the prohibited transaction provisions of ERISA (29 U.S.C. 1106) and the Code (26 U.S.C. 4975(c)(1)) (the Best Interest Contract Exemption (BIC Exemption) and the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Principal Transactions Exemption)) as well as amendments to previously granted exemptions (collectively referred to as ''PTEs,'' unless otherwise indicated). The Fiduciary Rule and PTEs had an original applicability date of April 10, 2017.

Presidential Memorandum

By Memorandum dated February 3, 2017, the President directed the Department to prepare an updated analysis of the likely impact of the Fiduciary Rule on access to retirement information and financial advice. The President's Memorandum was published in the **Federal Register** on February 7, 2017, at 82 FR 9675. On March 2, 2017, the Department published a notice of proposed rulemaking that proposed a 60-day delay of the applicability date of the Rule and PTEs. The proposal also sought public comments on the questions raised in the Presidential Memorandum and generally on questions of law and policy concerning the Fiduciary Rule and PTEs.[2] As of the close of the first comment period on March 17, 2017, the Department had received nearly 200,000 comment and petition letters expressing a wide range of views on the proposed 60-day delay. Approximately 650 commenters supported a delay of 60 days or longer, with some requesting at least 180 days and some up to 240 days or a year or longer (including an indefinite delay or repeal); approximately 450 commenters opposed any delay. Similarly, approximately 15,000 petitioners supported a delay and approximately 178,000 petitioners opposed a delay.

First Delay of Applicability Dates

On April 7, 2017, the Department promulgated a final rule extending the applicability date of the Fiduciary Rule by 60 days from April 10, 2017, to June 9, 2017 (''April Delay Rule'').[3] It also extended from April 10 to June 9, the applicability dates of the BIC Exemption and Principal Transactions Exemption and required investment advice fiduciaries relying on these exemptions to adhere only to the Impartial Conduct Standards as conditions of those exemptions during a transition period from June 9, 2017, through January 1, 2018. The April Delay Rule also delayed the applicability of amendments to an existing exemption, Prohibited Transaction Exemption 84–24 (PTE 84–24), until January 1, 2018, other than the Impartial Conduct Standards, which became applicable on June 9, 2017. Lastly, the April Delay Rule extended for 60 days, until June 9, 2017, the applicability dates of amendments to other previously granted exemptions. The 60-day delay, including the delay of the Impartial Conduct Standards in the BIC Exemption and Principal Transactions Exemption, was considered appropriate by the Department at that time. Compliance with other conditions for transactions covered by these exemptions, such as requirements to make specific disclosures and representations of fiduciary compliance in written communications with investors, was postponed until January 1, 2018, by which time the Department intended to complete the examination and analysis directed by the Presidential Memorandum.

Request for Information

On July 6, 2017, the Department published in the **Federal Register** a Request for Information (RFI).[4] The purpose of the RFI was to augment some of the public commentary and input received in response to the April Delay, and to request comments on issues raised in the Presidential Memorandum. In particular, the RFI sought public input that could form the basis of new exemptions or changes to the Rule and PTEs. The RFI also specifically sought input regarding the advisability of extending the January 1, 2018, applicability date of certain provisions in the BIC Exemption, the Principal Transactions Exemption, and PTE 84–24. Question 1 of the RFI specifically asked whether a delay in the January 1, 2018, applicability date of the provisions in the BIC Exemption, Principal Transactions Exemption and amendments to PTE 84–24 would benefit retirement investors by allowing for more efficient implementation responsive to recent market developments and reduce burdens on financial services providers. Comments relating to an extension of the January 1, 2018, applicability date of certain provisions were requested by July 21, 2017. All other comments were requested by August 7, 2017. The Department received approximately 60,000 comment and petition letters expressing a wide range of views on whether the Department should grant an additional delay and what should be the duration of any such delay. Many commenters supported delaying the January 1, 2018, applicability dates of these PTEs. Other commenters disagreed, however, asserting that full application of the Fiduciary Rule and PTEs is necessary to protect retirement investors from conflicts of interests, that the original applicability dates should not have been delayed from April, 2017, and that the January 1, 2018, date should not be further delayed. Still others stated their view that the Fiduciary Rule and PTEs should be repealed and replaced, either with the original 1975 regulation or with a substantially revised rule. Among the commenters supporting a delay, some suggested a fixed length of time and others suggested a more open-ended delay. Supporters of a fixed-length delay did not express a consensus view on the appropriate length, but the range generally was 1 to 2 years from the current applicability date of January 1,

[1] The 1975 Regulation was published as a final rule at 40 FR 50842 (Oct. 31, 1975).

[2] 82 FR 12319.

[3] 82 FR 16902.

[4] 82 FR 31278.

2018. Those commenters suggesting a more open-ended framework for measuring the length of the delay generally recommended that the applicability date be delayed for at least as long as it takes the Department to finish the reexamination directed by the President. These commenters suggested that the length of the delay should be measured from the date the Department, after finishing the reexamination, either announces that there will be no new amendments or exemptions or publishes a new exemption or major revisions to the Fiduciary Rule and PTEs.

B. Proposed Amendments—18-Month Delay

On August 31, 2017, the Department published a proposal (the August 31 Notice) to extend the current special transition period under sections II and IX of the BIC Exemption and section VII of the Principal Transactions Exemption from January 1, 2018, to July 1, 2019. The Department also proposed in the August 31 Notice to delay the applicability of certain amendments to PTE 84–24 for the same period.[5] Although proposing a date-certain delay (18 months), the Department specifically asked for input on various alternative approaches. The Department received approximately 145 comment letters. Approximately 110 commenters support a delay of 18 months or longer; and, by contrast, approximately 35 commenters oppose any delay.[6] The Department also received two petitions containing approximately 2,860 signatures or letters supporting the delay. These comment letters are available for public inspection on EBSA's Web site. Specific views and positions of commenters are discussed below in section C of this document.

BIC Exemption (PTE 2016–01) and Principal Transactions Exemption (PTE 2016–02)

Although the Fiduciary Rule, BIC Exemption, and Principal Transactions Exemption first became applicable on June 9, 2017, with transition relief through January 1, 2018, the August 31 Notice proposed to extend the Transition Period until July 1, 2019. During this extended Transition Period, ''Financial Institutions'' and ''Advisers,'' as defined in the exemptions, would only have to comply with the ''Impartial Conduct Standards'' to satisfy the exemptions' requirements. In general, this means that Financial Institutions and Advisers must give prudent advice that is in retirement investors' best interest, charge no more than reasonable compensation, and avoid misleading statements.[7]

The August 31 Notice proposed that the remaining conditions of the BIC Exemption would not become applicable until July 1, 2019. Remaining conditions include the requirement, for transactions involving IRA owners, that the Financial Institution enter into an enforceable written contract with the retirement investor. The contract would include an enforceable promise to adhere to the Impartial Conduct Standards, an express acknowledgement of fiduciary status, and a variety of disclosures related to fees, services, and conflicts of interest. IRA owners, who do not have statutory enforcement rights under ERISA, would be able to enforce their contractual rights under state law. Also, as of July 1, 2019, the exemption would require Financial Institutions to adopt a substantial number of new policies and procedures that meet specified conflict-mitigation criteria. In particular, the policies and procedures must be reasonably and prudently designed to ensure that Advisers adhere to the Impartial Conduct Standards and must provide that neither the Financial Institution nor (to the best of its knowledge) its affiliates or related entities will use or rely on quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation, or other actions or incentives that are intended or would reasonably be expected to cause advisers to make recommendations that are not in the best interest of the retirement investor. Also as of July 1, 2019, Financial Institutions entering into contracts with IRA owners pursuant to the exemption would have to include a warranty that they have adopted and will comply with the required policies and procedures. Financial Institutions would also be required at that time to provide disclosures, both to the individual retirement investor on a transaction basis, and on a Web site.

Similarly, while the Principal Transactions Exemption is conditioned solely on adherence to the Impartial Conduct Standards during the Transition Period, the August 31 Notice also proposed that its remaining conditions would become applicable on July 1, 2019. The Principal Transactions Exemption permits investment advice fiduciaries to sell to or purchase from plans or IRAs ''principal traded assets'' through ''principal transactions'' and ''riskless principal transactions''—transactions involving the sale from or purchase for the Financial Institution's own inventory. As of July 1, 2019, the exemption would require a contract and a policies and procedures warranty that mirror the requirements in the BIC Exemption. The Principal Transactions Exemption also includes some conditions that are different from the BIC Exemption, including credit and liquidity standards for debt securities sold to plans and IRAs pursuant to the exemption and additional disclosure requirements.

PTE 84–24

PTE 84–24, which applies to advisory transactions involving insurance and annuity contracts and mutual fund shares, was most recently amended in 2016 in conjunction with the development of the Fiduciary Rule, BIC Exemption, and Principal Transactions Exemption.[8] Among other changes, the amendments included new definitional terms, added the Impartial Conduct Standards as requirements for relief, and revoked relief for transactions involving fixed indexed annuity contracts and variable annuity contracts, effectively requiring those Advisers who receive conflicted compensation for recommending these products to rely upon the BIC Exemption. However, except for the Impartial Conduct Standards, which were applicable beginning June 9, 2017, the August 31 Notice proposed that the remaining amendments would not be applicable until July 1, 2019. Thus, because the amendment revoking the availability of PTE 84–24 for fixed indexed annuities would not be not be applicable until July 1, 2019, affected parties (including

[5] 82 FR 41365 (entitled ''Extension of Transition Period and Delay of Applicability Dates; Best Interest Contract Exemption (PTE 2016–01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016–02); Prohibited Transaction Exemption 84–24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters (PTE 84–24)'').

[6] The Department includes these counts only to provide a rough sense of the scope and diversity of public comments. For this purpose, the Department counted letters that do not expressly support or oppose the proposed delay, but that express concerns or general opposition to the Fiduciary Rule or PTEs, as supporting delay. Similarly, letters that do not expressly support or oppose the proposed delay, but that express general support for the Rule or PTEs, were counted as opposing a delay.

[7] In the Principal Transactions Exemption, the Impartial Conduct Standards specifically refer to the fiduciary's obligation to seek to obtain the best execution reasonably available under the circumstances with respect to the transaction, rather than to receive no more than ''reasonable compensation.''

[8] 81 FR 21147 (April 8, 2016).

insurance intermediaries) would be able to rely on PTE 84–24, subject to the existing conditions of the exemption and the Impartial Conduct Standards, for recommendations involving all annuity contracts during the Transition Period.

C. Comments and Decisions

Extension of the Transition Period

Based on its review and evaluation of the public comments, the Department is adopting the proposed amendments without change. Thus, the Transition Period in the BIC Exemption and Principal Transaction Exemption is extended for 18 months until July 1, 2019, and the applicability date of the amendments to PTE 84–24, other than the Impartial Conduct Standards, is delayed for the same period. Accordingly, the same rules and standards in effect between June 9, 2017, and December 31, 2017, will remain in effect throughout the duration of the extended Transition Period. Consequently, Financial Institutions and Advisers must continue to give prudent advice that is in retirement investors' best interest, charge no more than reasonable compensation, and avoid misleading statements. As the Department has stated previously:

> The Impartial Conduct Standards represent fundamental obligations of fair dealing and fiduciary conduct. The concepts of prudence, undivided loyalty and reasonable compensation are all deeply rooted in ERISA and the common law of agency and trusts. These longstanding concepts of law and equity were developed in significant part to deal with the issues that arise when agents and persons in a position of trust have conflicting loyalties, and accordingly, are well-suited to the problems posed by conflicted investment advice.[9]

It is based on the continued adherence to these fundamental protections that the Department, pursuant to 29 U.S.C. 1108 and 26 U.S.C. 4975, is making the necessary findings and granting the extension until July 1, 2019.

A delay of the remaining conditions of the BIC Exemption and Principal Transactions Exemption, and of the remaining amendments to PTE 84–24, is necessary and appropriate for multiple reasons. To begin with, the Department has not yet completed the reexamination of the Fiduciary Rule and PTEs, as directed by the President on February 3, 2017. More time is needed to carefully and thoughtfully review the substantial commentary received in response to the multiple solicitations for comments in 2017 and to honor the President's directive to take a hard look at any potential undue burden. 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. The examination will help identify any potential alternative exemptions or conditions that could reduce costs and increase benefits to all affected parties, without unduly compromising protections for retirement investors. The Department anticipates that it will have a much clearer sense of the range of such alternatives only after it completes a careful review of the responses to the RFI. The Department also anticipates that it will propose in the near future a new streamlined class exemption. However, neither such a proposal nor any other changes or modifications to the Fiduciary Rule and PTEs, if any, realistically could be finalized by the current January 1, 2018, applicability date. Nor would that timeframe accommodate the Department's desire to coordinate with the Securities and Exchange Commission (SEC) and other regulators, such as the Financial Industry Regulatory Authority (FINRA) and the National Association of Insurance Commissioners (NAIC) in the development of any such proposal or changes. The Chairman of the SEC has recently published a statement seeking public comments on the standards of conduct for investment advisers and broker-dealers, and has welcomed the Department's invitation to engage constructively as the SEC moves forward with its examination of the standards of conduct applicable to investment advisers and broker-dealers, and related matters. Absent a delay, however, Financial Institutions and Advisers would feel compelled to ready themselves for the provisions that would become applicable on January 1, 2018, despite the possibility of changes and alternatives on the horizon. The 18-month delay avoids obligating financial services providers to incur costs to comply with conditions, which may be revised, repealed, or replaced. The delay also avoids attendant investor confusion, ensuring that investors do not receive conflicting and confusing statements from their financial advisors as the result of any later revisions.

Not all commenters support this approach. As mentioned above, the Department received approximately 145 comment letters on the proposed 18-month delay. As with earlier comments on the April Delay Rule, as well as those received in response to Question 1 of the RFI, there is no uniform consensus on whether a delay is appropriate, or on the appropriate length of any delay. Some commenters supported the proposed 18-month delay, some commenters sought longer delays, and still other commenters opposed any delay at all. However, a clear majority of commenters support a delay of at least 18 months, with many supporting a much longer delay.

The primary reason commenters cited in support of the delay was to avoid unnecessary costs of compliance with provisions of the Fiduciary Rule and PTEs that the commenters believed could be changed or rescinded upon completion of the review under the Presidential Memorandum.[10] Other reasons cited by commenters were to provide time for the Department to coordinate with the SEC and other regulators such as FINRA and the NAIC; allow more time for industry to come into compliance with the Fiduciary Rule and PTEs, including additional time to develop disclosures and train employees; and to reduce the possibility of client confusion resulting from attempts to comply with provisions of the Fiduciary Rule and PTEs that may change following the review pursuant to the President's Memorandum.[11]

[9] Best Interest Contract Exemption, 81 FR 21002, 21026 (April 8, 2016) (footnote omitted).

[10] *See, e.g.,* Comment Letter #42 (Western & Southern Financial Group) (''only after the Fiduciary Regulation has been reviewed and revisions to it have been proposed and finalized (all in accordance with President Trump's February 3, 2017 memorandum) will WSF&G and other similarly situated companies know with certainty what conditions will be placed on providing investment advice to retirement investors. Only then, can we appropriately design and implement compliance structures, make investments in information technology, and produce products and services that meet both the revised Fiduciary Regulation requirements and the needs of retirement investors.''); Comment Letter #76 (Groom Law Group, on Behalf of Annuity and Insurance Company Clients) (''[i]n the absence of the eighteen-month extension, financial service providers, retirement plans, and individual savers would be subjected to extreme market dislocations. The pricing of investment products and services, the distribution models under which those services are delivered and the job responsibilities of thousands of financial services firm employees would be subject to severe dislocation as new requirements take effect. In addition, retirement savers' access to investment advice and the terms and conditions under which that investment advice would be provided could change repeatedly and dramatically as changes to the Fiduciary Rule are made and new FAQs are issued.''); Comment Letter #79 (Investment Company Institute) (''[a]bsent a delay, service providers will continue to spend significant amounts preparing for January 1, 2018, the vast majority of which will be spent implementing the more cumbersome and technically complicated aspects of the BIC Exemption conditions.'').

[11] *See, e.g.,* Comment Letter #52 (Transamerica) (''to avoid wasteful and duplicative compliance costs and business model changes'' and ''to permit further time for coordination with the SEC.''); Comment Letter #55 (Prudential Financial) (supporting the proposed extension/delay as ''sufficient for the Department to assess and develop

The primary reason commenters gave against the delay is that investors will be economically harmed during the 18-month delay period because, according to these commenters, there would not be any meaningful enforcement mechanism in the PTEs without the contract, warranty, disclosure and other enforcement and accountability conditions.[12] According to these commenters, there is no credible basis to believe that significant numbers of Financial Institutions and Advisers will actually comply with the Impartial Conduct Standards when advising investors during the Transition Period without these enforcement and accountability conditions. In the view of these commenters, the Department's 2016 RIA supports their position that compliance numbers will be low with the enforcement and accountability conditions being delayed until July 1, 2019. If Financial Institutions and Advisers do not adhere to the Impartial Conduct Standards, the investor gains predicted in the Department's 2016 RIA for the Transition Period will not remain intact, according to these commenters, in which case the cost of the 18-month delay would exceed its benefits. Assuming twenty-five, fifty, and seventy-five percent compliance rates, one commenter estimates that delaying the enforcement conditions an additional 18 months would cost retirement savers an additional $5.5 billion (75 percent compliance) to $16.3 billion (25 percent compliance) over 30 years, with a middle estimate of $10.9 billion (50 percent compliance).[13] To support adherence to the Impartial Conduct Standards during the Transition Period, and thereby preserve some predicted investor gains, several of these commenters suggested that the Department, at a bare minimum, should add the specific disclosure and representation of fiduciary compliance conditions originally required for transition relief (but which were delayed by the April Delay Rule).[14] A subset of enforcement conditions, less than the full set of conditions scheduled now for July 1, 2019, would increase the likelihood of greater levels of adherence to the Impartial Conduct Standards during the Transition Period over those levels of adherence likely if no enforcement conditions are included, according to these commenters.

Because the contract, warranty, disclosure and other enforcement and accountability conditions in the PTEs are intended to support adherence to the Impartial Conduct Standards, the Department acknowledges that the 18-month delay may result in a deferral of some of the estimated investor gains. As discussed below in the regulatory impact analysis, the precise amount of such deferral is unknown because the precise degree of adherence during the 18-month period also is unknown. Many commenters strongly dispute the likelihood of any harm to investors as result of the delay of the enforcement and accountability conditions. These commenters emphatically believe that investors are sufficiently protected by the imposition of the Impartial Conduct Standards along with many applicable non-ERISA consumer protections.[15]

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needed Rule changes, engage in meaningful coordination with the Securities and Exchange Commission, as well as the states and other prudential regulators, and adopt those changes'' and also to minimize ''confusion on the part of consumers and brings certainty to the financial services industry.''); Comment Letter #63 (Massachusetts Mutual Life Insurance Company) (will ''benefit retirement investors by ensuring that their access to products or advice is not needlessly restricted or reduced as a result of . . . changes to business models . . . that may prove unnecessary,'' and ''will provide time for the Department to complete its review of the Fiduciary Rule pursuant to the Presidential Memorandum,'' and ''to work with the Securities and Exchange Commission and the National Association of Insurance Commissioners.''); Comment Letter #88 (AXA US) (''will provide the Department with sufficient time to work with other regulators to develop a harmonized regulatory framework'' and also ''will allow industry participants adequate time to comply with the Rule's final requirements''); Comment Letter #375 (Stifel Financial Corp.) (July 25, 2017, response to RFI) (''Thus, with the Impartial Conduct Standards already in place for retirement accounts, the DOL and SEC should move together and conduct a proper and fulsome study of whether additional requirements are needed to achieve appropriate consumer protections while maintaining investor choice. As the DOL and SEC study these issues, and to prevent further disruption to Brokerage and Advisory business models, it is critical that the DOL delay the January 1, 2018 implementation date for the additional conditions of the Best Interest Contract Exemption, including the contractual warranties, until a solution is determined.'').

[12] *See, e.g.,* Comment Letter #20 (Consumer Action) (''no real evidence to believe that there will be compliance with the best-interest rule without enforcement.''); Comment Letter #44 (Economic Policy Institute) (''Delaying DOL enforcement an additional 18 months (from January 1, 2018 to July 1, 2019) would cost retirement savers an additional $5.5 billion to $16.3 billion over 30 years, with a middle estimate of $10.9 billion.''); Comment Letter #68 (AARP) (''every day the protections of the prohibited transactions class exemptions are delayed the retirement security of hard working Americans is put at risk, along with potential negative impacts on the economy as a whole.''); Comment Letter #78 (Financial Planning Coalition) (''Without the PTEs, consumers do not have access to legally binding contracts on which they can rely to uphold their right to conflict-free advice in their best interest.''); Comment Letter #80 (Consumer Federation of America) (''Extending this transition period will mean that the full protections and benefits of the fiduciary rule won't be realized and retirement savers, particularly IRA investors, will continue to suffer the harmful consequences of conflicted advice.''); Comment Letter #81 (National Employment Law Project) (''Without any meaningful enforcement mechanism, which does not exist in the IRA market without the Contract Condition, there is no basis to conclude—as the Department erroneously does—that a significant number of investment-advice fiduciaries will adhere to the ICSs when advising IRA owners during the period of the proposed delay.''); Comment Letter #84 (Better Markets) (''The long-term suspension of these accountability conditions will remove an important deterrent against violations of the Rule, resulting in conflicts of interest taking a greater toll on IRA investors in particular and causing greater overall losses in retirement savings, especially as they are compounded over time.''); Comment Letter #91 (Public Investors Arbitration Bar Association) (''If the PTEs are not permitted to be fully implemented on January 1, 2018, retirement investors will continue to be harmed by the same conflicts of interests that made the Rule and PTEs necessary in the first place.''); Comment Letter #120 (AFL–CIO) (''The Economic Policy Institute estimates that this proposal will cost retirement savers between $5.5 billion and $16.3 billion over thirty years—on top of the estimated $2.0 billion to $5.9 billion losses resulting from the Department's previous delay.''); Comment Letter #126 (Institute for Policy Integrity at New York University School of Law) (''In sum, the Department's proposal that the benefits would remain intact even with the postponement of the enforcement provisions is at odds with its earlier analysis of the necessity of these provisions.'').

[13] Comment Letter #44 (Economic Policy Institute).

[14] Comment Letter #20 (Consumer Action) (''we recommend that—at a minimum—the Department require that by January 2018 firms and advisers agree to abide by the impartial conduct standard to acknowledge their fiduciary status.''); Comment Letter #80 (Consumer Federation of America) (''at a bare minimum, the Department must require firms and advisers to comply with the original transitional requirements of the exemptions, as set forth in Section IX of the BIC Exemption and Section VII of the Principal Transactions Exemption, not just the Impartial Conduct Standards. These include: (1) The minimal transition written disclosure requirements in which firms acknowledge their fiduciary status and that of their advisers with respect to their advice, state the Impartial Conduct Standards and provide a commitment to adhere to them, and describe the firm's material conflicts of interest and any limitations on product offering; (2) the requirement that firms designate a person responsible for addressing material conflicts of interest and monitoring advisers' adherence to the Impartial Conduct Standards; and (3) the requirement that firms maintain records necessary to prove that the conditions of the exemption have been met.'').

[15] *See, e.g.,* Comment Letter #11 (Alternative and Direct Investment Securities Association) (The Impartial Conduct Standards requirement ''can and does go a long way toward ensuring that retirement savers are provided with investment advice designed to allow them to meet their goals for retirement and otherwise.''); Comment Letter # 23 (Wells Fargo) (Because retirement investors will continue to receive the protections of the Impartial Conduct Standards, ''imposing additional compliance conditions in connection with any extension is unnecessary.''); Comment letter #38 (Federal Investors, Inc.) (''investor losses (if any) from extending the transition period would be expected to be relatively small, and as such, outweighed by the cost savings to firms by postponing changes that may prove unnecessary, or may have to be revisited''); Comment Letter #45 (Madison Securities) (''Because the Impartial Conduct Standards remain in place . . . to protect consumers, it is important for the Department to take the time necessary to address applicable issues and for the financial services industry to build adequate and appropriate systems to comply with

Continued

Many of these industry commenters note that fiduciary advisers who do not provide impartial advice as required by the Fiduciary Rule and PTEs in the IRA market would violate the prohibited transaction rules of the Code and become subject to the prohibited transaction excise tax. In addition, comments received by the Department assert that many financial institutions already have completed or largely completed work to establish policies and procedures necessary to make many of the business structure and practice shifts necessary to support compliance with the Fiduciary Rule and Impartial Conduct Standards (*e.g.,* drafting and implementing training for staff, drafting client correspondence and explanations of revised product and service offerings, negotiating changes to agreements with product manufacturers as part of their approach to compliance with the PTEs, changing employee and agent compensation structures, and designing product offerings that mitigate conflicts of interest).[16] After review of these comments, and meeting with stakeholders, the Department believes that many financial institutions are using their compliance infrastructure to ensure that they currently are meeting the requirements of the Impartial Conduct Standards, which the Department believes will substantially protect the investor gains estimated in the 2016 RIA. Additionally, the Department believes that there are two enforcement mechanisms in place: The imposition of excise taxes, and a statutorily-provided cause of action for advice to ERISA plan assets, including advice concerning rollovers of these assets.[17] Given these conclusions, the Department declines to add additional conditions to the PTEs during the Transition Period, but will reevaluate this issue as part of the reexamination of the Fiduciary Rule and PTEs and in the context of considering the development of additional and more streamlined exemption approaches. Accordingly, as the Department continues its reexamination, the Department welcomes input and data from stakeholders demonstrating the regulated community's implementation of the Impartial Conduct Standards.

In this regard, the Department notes that, despite the view of several commenters, the duties of prudence and loyalty embedded in the Impartial Conduct Standards provide protection to retirement investors during the Transition Period, apart from the additional delayed enforcement and accountability provisions. The Department previously articulated the view that, during the Transition Period, it expects that advisers and financial institutions will adopt prudent supervisory mechanisms to prevent violations of the Impartial Conduct Standards.[18] Likewise, the Department also previously articulated its view that the Impartial Conduct Standards require that fiduciaries, during the Transition Period, exercise care in their communications with investors, including a duty to fairly and accurately describe recommended transactions and compensation practices.[19]

Authority To Delay PTE Conditions/ Amendments

Some commenters questioned the Department's authority to delay the PTE conditions and amendments as proposed. They focused their arguments on section 705 of the APA (5 U.S.C. 705), which permits an agency to postpone the effective date of an action, pending judicial review, if the agency finds that justice so requires. These commenters say that this provision is the only method by which a federal agency may delay or stay the applicability or effective date of a rule, even if another statute confers general rulemaking authority on that agency. Since the PTEs were applicable to transactions occurring on or after June 9, 2017, the commenters argue that section 705 of the APA, by its terms, is not available in this circumstance. In the absence of the availability of section 705 of the APA, they assert, the Department lacks authority to delay the applicability date of the PTE conditions and amendments, as proposed. However, the Department disagrees that it lacks authority to adopt the 18-month delay of the conditions and amendments in this circumstance, where the Department is acting through and in accordance with its ordinary notice and comment rulemaking procedures for PTEs, pursuant to both the APA and 29 U.S.C. 1108. As noted elsewhere in the document, the Department is granting

any final rule.''); Comment Letter #50 (Paul Hastings LLP on behalf of Advisors Excel) (''with the Impartial Conduct Standards in place during the evaluation period, the interests of Retirement Investors are protected during the Department's review of the Rule.''); Comment Letter #56 (Benjamin F. Edwards & Co.) (''Given that the Impartial Conduct Standards are already in place and that there is an additional existing and overlapping robust infrastructure of regulations that are enforced by the SEC, FINRA, Treasury, and the IRS, not to mention the Department, investors are well protected and will continue to be well protected during any extension.''); Comment Letter #57 (Pacific Life Insurance Company) (''Since advisers are now required to adhere to the requirements set forth in the Impartial Conduct Standards . . . the Rule's stated goal to eliminate conflicted advice has been largely addressed and procedures to avoid said conflicted advice will be thoroughly engrained in advisers' practices during the delay.''); Comment Letter #65 (Securities Industry and Financial Markets Association) (''We would also use this opportunity to address the question of the potential harm to investors if the Department was to move forward with this delay. We would refer the Department back to our comment letter of August 9, 2017. . . . In that letter we refute the supposed harm to investors if the rule is delayed, while also showing the harm if the Department actually moves forward with the current rule unchanged. We were concerned then, and are even more concerned now, that some of the changes that have taken effect in order to comply with this rule, will make it even more difficult for investors to save.''); Comment Letter #116 (Financial Services Roundtable) (''Any concern that Retirement Investors will be harmed by an extended transition period should be allayed because the Impartial Conduct Standards will continue to protect them during the extended transition period.'').

16 *See, e.g.,* Comment Letter # 39 (Financial Services Institute) (incorporating March 17, 2017, response to RFI) (''During the transition period . . . financial institutions and financial advisors relying on the Best Interest Contract Exemption (BICE) must adhere to the Fiduciary Rule's Impartial Conduct Standards. These Impartial Conduct Standards require financial institutions and advisors to provide advice in the retirement investors' best interest, charge no more than reasonable compensation for their services and to avoid misleading statements. As a result, firms that are relying on the BICE have already implemented procedures to ensure that they are meeting these new obligations. These new procedures may include changes to the firms' compensation structures, restrictions on the availability of certain investment products, reductions in the overall number of product and service providers, improvements to their due diligence review of products and service providers, additional surveillance efforts to monitor the sales practices of their affiliated financial advisors for compliance and the creation and maintenance of books and records sufficient to demonstrate compliance with the Impartial Conduct Standards. Thus, investors are already benefitting from stronger protections since the Fiduciary Rule became partly applicable on June 9, 2017. . . . As a result, we believe any harm to investors caused by further delay of the additional requirements, to the extent it exists, is greatly reduced by the application of the Fiduciary Rule's Impartial Conduct Standards.''). *But see* Comment Letter #141 (Consumer Federation of America) (October 10, 2017 Supplement) (noting a recent survey of broker-dealers in which 64% of survey participants answered that they have not made any changes in their product mix or internal compensation structures, and concluding therefore that ''it is unreasonable for the Department to believe that a significant percentage of firms have made efforts to adhere to the rule and Impartial Conduct Standards. If the Department does not factor this into its decisionmaking, it will have failed to consider an important aspect of the problem.''). *See also* the Department's Conflict of Interest FAQs, Transition Period (Set 1), Q6 (''During the transition period, the Department expects financial institutions to adopt such policies and procedures as they reasonably conclude are necessary to ensure that advisers comply with the impartial conduct standards'') *available at https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/coi-transition-period-1.pdf.*

17 82 FR 16902, 16909 (April 7, 2017).

18 81 FR 21002, 21070 (April 8, 2016).

19 82 FR 16902, 16909 (April 7, 2017) (recognizing fiduciary duty to fairly and accurately describe recommended transactions and compensation practices).

this delay pursuant to section 408 of ERISA.[20] Under this provision, the Secretary of Labor has discretionary authority to grant administrative exemptions, with or without conditions, under ERISA and the Code on an individual or class basis, if the Secretary finds that the exemptions are (1) administratively feasible, (2) in the interests of plans and their participants and beneficiaries and IRA owners, and (3) protective of the rights of the participants and beneficiaries of such plans and IRA owners. Having made these findings in this case after reviewing the substantial public comments received in response to the RFI and August 31 Notice, the Department is confident of its authority to grant the 18-month delay. In the Department's view, it can delay, modify or revoke, temporarily or otherwise, some or all of a PTE, using notice and comment rulemaking, as long as—pursuant to the appropriate procedures—the Department makes the required findings and is not arbitrary or capricious in doing so. The Department has fully satisfied those requirements in this case, just as it did when it delayed applicability dates from June 9, 2017, through January 1, 2018.

Length of Delay

Although the August 31 Notice proposed a fixed 18-month delay, the proposal also specifically solicited comments on the benefit or harms of two alternative delay approaches: (1) A contingent delay that ends a specified period after the occurrence of a specific event, such as the Department's completion of the reexamination ordered by the President or the publication of changes to the Fiduciary Rule or PTEs; and (2) a tiered approach postponing full applicability until the earlier of or the later of (a) a time certain and (b) the end of a specified period after the occurrence of a specific event. There was no consensus among the commenters as to either the proper amount of time for a delay or the best approach (time certain delay versus contingent or tiered delays). Pros and cons were reported on all three approaches.

Many commenters supported the fixed 18-month delay in the proposal. The proposed 18-month period would commence on January 1, 2018, and end on July 1, 2019, regardless of exactly when the Department might complete its reexamination or take any other action or actions. The premise behind this approach is that, whatever action or actions may or may not be taken by the Department, such actions would be completed within the 18-month period. These commenters believe this approach provides more certainty, to both industry stakeholders and investors, as compared to the other approaches.[21] This is these commenters' view, even though many of them recognized that an additional delay could be needed in the future, depending on the extent of future changes to the Fiduciary Rule and PTEs, if any.[22] These commenters believe that certainty is needed for planning and implementation purposes and that a flat delay of 18 to 24 months provides that certainty.[23] Even among the

[20] 29 U.S.C. 1108(a); *see also* 26 U.S.C. 4975(c)(2).

[21] Comment Letter #38 (Federated Investors, Inc.) (''the time-certain delay is the most appropriate and workable choice under the circumstances, because it provides financial services firms, plan sponsors, plan participants and beneficiaries, IRA owners with the certainty of a clear target date. If the circumstances approaching July 1, 2019, indicate the need for a further delay, we would expect that the Department will, at that time, evaluate and provide what would be a reasonable time period to come into compliance based on the nature and extent of any changes to the existing regulation and exemptions.''); Comment Letter #39 (Financial Services Institute) (tiered delay or conditional delay ''would harm consumers by adding uncertainty and confusion to the market, while providing insufficient certainty to industry stakeholders.''); Comment Letter #46 (American Bankers' Assoc.) (''fixed 18-month period would minimize the costs that would be incurred by financial services providers to comply with Fiduciary Rule and exemptions as currently written. It would also allow the Department to measure the progress of its regulatory review against a firm deadline. If, as the deadline date approaches, it appears additional time might be needed to complete its regulatory review, then the Department can consider at that time whether to propose such additional time as may be needed for completion.''); Comment Letter #51 (Morgan Stanley) (''A delay solely based on a specific contingent future event (*e.g.,* the issuance of new exemptive relief) poses a host of problems for financial institutions. . . . By enacting a time-certain delay of at least eighteen months, financial institutions will be better able to plan for and implement any changes that are necessary to comply with new guidance and create or modify product and platform offerings. . . . A 'floating timeline' as suggested by the Department also poses the risk of further confusing the retirement investors that the Rule is intended to protect.''); Comment Letter #73 (Raymond James) (''While there are benefits and drawbacks to any method chosen, we feel that the 18-month period certain delay provides a level of certainty which is beneficial to the Department's ongoing analysis of the Rule and the retirement marketplace. Along with the Department's continued analysis and potential rulemaking, please consider that an 18-month delay may be insufficient to not only complete the Department's work, but also the subsequent implementation efforts firms will need to undertake. As a means to maintain assurance in the marketplace and provide adequate time to accomplish all relevant objectives, please consider during your analysis whether it may be prudent to issue an additional delay further in advance of the July 1, 2019 date.''); Comment Letter #82 (Standard Insurance Company, Standard Retirement Services) (''The Department should *not* adopt a tiered delay approach. The other methods proposed in the request for comments would only add further confusion. A fixed time period will be in the best interests of retirement investors because it will allow financial service companies to be able to continue to provide advice, education and services to retirement plan investors without uncertainty. Once any changes to the Regulations and Exemptions are proposed and finalized, the Department will be in a better position to evaluate what, if any, additional time is needed to implement the changes. A fixed time period for the Extensions will provide the industry and retirement investors alike a more definite environment in which to conduct business.''); Comment Letter #110 (Association for Advanced Life Underwriting) (''Given the 'lead' time required for compliance, only the date certain approach provides 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.''); Comment Letter #116 (Financial Services Roundtable) (''the Department should not adopt a tiered transition period . . .'').

[22] *See, e.g.,* Comment Letter #75 (Groom Law Group—Recordkeeping Clients) (''The Groom Group supports a fixed delay as opposed to a tiered delay structure because the Department has already evaluated the cost-benefit analysis of the Proposed Extension and because the Department could always propose an additional delay closer to July 1, 2019 if it determines that additional time is needed. Right now, it is most important that the Department finalize the Proposed Extension promptly. Evaluating extensions of different lengths or with variable end points will only prolong the amount of time it takes for the Department to finalize the Proposed Extension.''); Comment Letter #7 (Tucker Advisors) (''Should the Department determine that additional time is necessary to complete its review or should the Department ultimately propose changes, the Department can, at that time, propose an additional extension to provide plan service providers sufficient time to build out the systems necessary to comply with such changes.''); Comment Letter #27 (State Farm Mutual Automobile Insurance Company) (''State Farm suggests that the Department maintain a position of flexibility to the extent additional time is needed to ensure the implementation of an effective, workable and efficient rule.''); Comment Letter #57 (Pacific Life Insurance Company) (''if the Department retains flexibility in this delay, potentially revisiting when the revised final rule is released and changes are actually known, then Pacific Life does not feel the tiered-approach is a necessary method of delay.''); Comment Letter #69 (Teachers Insurance and Annuity Association of America-TIAA) (''While an extension tied to completion of the Department's review may offer some additional benefit, we believe it is more urgent that Proposed Extension be finalized.''); Comment Letter #79 (Investment Company Institute) (''The Department should clarify that it will provide a period of at least one year following the finalization of any modifications, and more time, depending on the nature of modifications made and the resultant lead time required to meet any attendant compliance requirements.'').

[23] Comment Letter #115 (Bank of New York Mellon & Pershing, LLC) (''we are supportive of an 18-month extension and delay to allow the Department to complete its review and consider modifications to the Rule and PTEs because it provides certainty that the marketplace needs to minimize disruptions for retirement investors. Whether the Department ultimately pursues a tiered approach or a fixed duration approach with respect

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commenters generally opposed to any delay, one commenter stated that, as between a fixed 18-month delay and the more open-ended contingent or tiered approaches, the fixed 18-month delay provides more certainty and protection to consumers.[24]

By contrast, many commenters believe a contingent or tiered approach is the better way forward.[25] Of paramount importance to most of these commenters is that they have sufficient time to ready themselves for compliance with any changes to the requirements of the Fiduciary Rule and PTEs, which they believe should be substantially different than the current Fiduciary Rule and PTEs. These commenters assert that it is improbable that the Department will complete the directed reexamination within the proposed 18-month period, let alone propose and finalize amendments to the Fiduciary Rule and PTEs and provide adequate time to come into compliance with any such revisions—all within that same 18-month period.[26] They, therefore, identify the contingent and tiered varieties as the better approaches because, in their estimation, these approaches would ensure adequate time for compliance with the Fiduciary Rule and PTEs, as revised, and thereby more effectively avoid a scenario of consecutive or serial piecemeal delays in the future.[27] These commenters generally favored a range of 12 to 24 months following the Department's finalization of changes to the Fiduciary Rule and PTEs or following the publication of a decision that no changes are on the horizon.

As between the proposed 18-month fixed delay and the contingent and tiered alternatives, the Department continues to believe that using a date-certain approach, rather than one of the other alternatives, is the best way to respond to and minimize concerns about uncertainty with respect to the eventual application and scope of the Fiduciary Rule and PTEs. Although the contingent and tiered approaches have the built-in advantage of an automatic extension, if needed, it is difficult to choose the appropriate triggering event before the Department completes its reexamination of the Fiduciary Rule and PTEs. Interjecting unnecessary uncertainty regarding the future applicability and scope of the Fiduciary Rule and PTEs is harmful to all stakeholders. In addition, the Department believes that the additional 18 months is sufficient to complete review of the new information in the record and to implement changes to the Fiduciary Rule and/or PTEs, if any, including opportunity for notice and comment and coordination with other regulatory agencies.

The proposal also solicited comments on whether to condition any extension of the Transition Period on the behavior of the entity seeking relief under the Transition Period. For example, the Department specifically asked for comment on whether to condition the delay on a Financial Institution's showing that it has, or a promise that it will, take steps to harness recent innovations in investment products and services, such as ''clean shares.'' All of the comments in response to this question opposed this idea. Some commenters expressed their concern that this approach would add confusion for Financial Institutions, who would be forced to change their products and services, and for retirement consumers, who would be forced to react to such changes.[28] Other commenters believed that this approach would create an unlevel playing field by providing relief to select business models and investments rather than providing more neutral relief to many different business models and investments.[29] Other

to the proposed extension and delay period, once any modifications to the Rule and PTEs are finalized, the Department will need to allow adequate time for firms to comply with such modified Rule and PTEs. We expect any changes proposed to the Rule and PTEs, or any newly proposed PTEs, will be made available to the public for notice and comment with the opportunity to review. Because we don't yet know the scope of these proposed changes or when such changes would become applicable, however, the need for additional potential transition period extensions and applicability date delays with respect to the PTEs is unavoidable.''); Comment Letter #112 (Northwestern Mutual Life Insurance Company) (''Northwestern Mutual supports a minimum delay of eighteen months as proposed by the Department and a further delay if the Department concludes that changes should be made to the Fiduciary Duty Rule or the Exemptions. . . . If, for example, the Department determines that significant changes should be made to the BIC, and those changes are made final in early 2019, then at least an additional transition year should be provided from that date to allow firms enough time to make the necessary changes to processes and systems and to be able to communicate in an orderly manner with their clients.''); Comment Letter #114 (BBVA Compass) (''In our view, however, the proposed 18-month extension provides the minimum period needed to allow the Department and other interested parties to review the Rule and the accompanying Exemptions, make appropriate determinations regarding what changes to the Rule are warranted and afford financial institutions reasonable time to develop and implement processes and systems changes necessary to conduct activity in a compliant manner.'').

[24] *See, e.g.,* Comment Letter # 68 (AARP) (although generally opposed to any delay, as between a fixed 18-month delay and a contingent or tiered delay, the commenter stated it ''is concerned that tiered compliance dates will exacerbate investor confusion and will make it more difficult for Americans saving for retirement to understand. A single compliance date would be preferred.'').

[25] *See, e.g.,* Comment Letter #29 (American Retirement Association) (Recommends a tiered approach in which the applicability date is delayed until ''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.'').

[26] *See, e.g.,* Comment Letter #127 (Cetera Financial Group) (a delay to July 1, 2019, or any other fixed date does not take into account the possibility that the review itself takes more than 18 months, the additional time that it will take financial advisers to digest any amendments to the rule and incorporate changes to their own systems and processes after a final rule is published, and the likelihood of confusion on the part of investors as to what standards apply to advice they receive in connection with retirement investments prior to publication of any amendments to the Fiduciary Rule.).

[27] *See, e.g.,* Comment Letter #65 (Securities Industry and Financial Markets Association) (''We believe that a tiered approach extending the delay to the later of the 18-month period the Department proposed and a period ending 24 months after the completion of the review and publication of final rules will best avoid the confusion, uncertainty and cost associated with continued piecemeal delays.''); Comment Letter #97 (Insured Retirement Institute) (''the tiered approach . . . would provide the greatest level of certainty for our members and the customers they serve. This structure would avoid the need for the Department to propose additional delays in the future. . .'').

[28] *See, e.g.,* Comment Letter #76 (Groom Law Group on Behalf of Annuity and Insurance Company Clients) (''Not only would imposing additional conditions reduce the benefit of the Proposed Extension, but additional conditions would add confusion for Financial Institutions, who would be forced to change their products and services, and for retirement consumers, who would be forced to react to such changes.''); Comment Letter #82 (Standard Life Insurance Company, Standard Retirement Services) (''To condition a further delay on certain steps toward 'innovations' would only serve to confuse investors and the retirement industry.'').

[29] *See, e.g.,* Comment Letter #62 (Lincoln Financial Group) (''We continue to urge the Department to . . . hold fee-based compensation and commissions to the same standard and process, so that guaranteed lifetime income products can be made available to consumers on a level playing field with other products.''); Comment Letter #65 (Securities Industry and Financial Markets Association) (''Further, we do not believe the Department should condition delays upon adoption of any specific 'innovations' by entities that rely on the Transition Period. [E]xemptions should be generally applicable to many different business models, and not simply the model that the Department prefers.''); Comment Letter #48 (American Council of Life Insurers) (''we strongly oppose a delay approach based on subjective criteria. . . . A subjective delay approach, based on undefined and ambiguous factors, such as whether firm has taken 'concrete steps' to 'harness' market developments, would require the Department to subjectively and inappropriately pick and choose among providers and products based on vague factors. We question the constitutionality and legality of such an approach.''); Comment Letter #53 (PSF Investments/Primerica) (''Tying a delay to firms' adoption of certain 'innovations' or business models would only add further to the perception or actuality that the government is favoring a product, an industry, a business model or a compensation structure.''); Comment Letter #109 (Fidelity Investments) (''Finally, we agree with the Department that applicability of the delay should not be conditioned on an advice provider engaging in certain behavior, such as making a promise to harness recent innovations in investment products

commenters are concerned that this approach would create uncertainty and confusion as to whether a particular firm is being held to a different legal standard than its peers, which would be detrimental to clients, investors, and other stakeholders.[30] One commenter indicated that it is strongly opposed to this approach because essentially it would be a new or different exemption, and not really an extension of the current Transition Period.[31] The Department is persuaded that conditions of this type generally seem more relevant in the context of considering the development of additional and more streamlined exemption approaches that take into account recent marketplace innovations, and less appropriate and germane in the context of a decision whether to extend the Transition Period.

Miscellaneous

The Department rejects certain comments beyond the scope of this rulemaking, whether such comments were received pursuant to the August 31 Notice or the RFI. For instance, one commenter urged the Department to amend the Principal Transactions Exemption for the Transition Period to remove the limits on products that can be traded on a principal basis, and allow those products that have historically been traded in the principal market to continue to be bought and sold by IRAs and plans, including, but not limited to, foreign currency, municipal bonds, and equity and debt IPOs. A different commenter requested that the Department revise the ''grandfather'' exemption, in section VII of the BIC Exemption, so that grandfathering treatment would apply to recommendations made prior to the expiration of the extended Transition Period (July 1, 2019).[32] Inasmuch as amendments such as these were not suggested in the August 31 Notice, the public did not have notice or a full opportunity to comment on these issues and they are beyond the scope of this final rule. The Department, however, is open to further consideration of the merits of these requests, and the submission of additional relevant information, as part of its ongoing reexamination of the Fiduciary Rule and related exemptions.

D. Findings by Secretary of Labor

ERISA section 408(a) specifically authorizes the Secretary of Labor to grant administrative exemptions from ERISA's prohibited transaction provisions.[33] Reorganization Plan No. 4 of 1978 generally transferred the authority of the Secretary of the Treasury to grant administrative exemptions under Code section 4975(c)(2) to the Secretary of Labor.[34] Regulations at 29 CFR 2570.30 to 2570.52 describe the procedures for applying for an administrative exemption. Under these authorities, the Secretary of Labor has discretionary authority to grant new or modify existing administrative exemptions under ERISA and the Code on an individual or class basis, if the Secretary finds that the exemptions are (1) administratively feasible, (2) in the interests of plans and their participants and beneficiaries and IRA owners, and (3) protective of the rights of the participants and beneficiaries of such plans and IRA owners. The Department has made such findings with respect to the 18-month extension of the Transition Period under the BIC and Principal Transactions Exemptions and the 18-month delay in the applicability of certain amendments to PTE 84–24. It is largely the continued imposition of the Impartial Conduct Standards that enables the Department to grant the delay under these standards, but other factors are also important to these findings. For instance, it is in the interests of plans and their participants and beneficiaries and IRA owners to avoid the cost and confusion of a potentially disorderly transition to PTE conditions that are under reexamination pursuant to a Presidential Executive Order and that may change in the near future. In addition, to be protective of the rights of participants, beneficiaries, and IRA owners, the Department chose a time certain delay of 18 months, rather than a more open-ended contingent or tiered alternative. These factors are discussed further in the RIA section of this document.

E. Extension of Temporary Enforcement Relief—FAB 2017–02

On May 22, 2017, the Department issued a temporary enforcement policy covering the transition period between June 9, 2017, and January 1, 2018, during which the Department will not pursue claims against investment advice fiduciaries who are working diligently and in good faith to comply with their fiduciary duties and to meet the conditions of the PTEs, or otherwise treat those investment advice fiduciaries as being in violation of their fiduciary duties and not compliant with the PTEs. *See* Field Assistance Bulletin 2017–02 (May 22, 2017) (FAB 2017–02). Comments were solicited on whether to extend this policy for the same period covered by the proposed extension of the Transition Period.

Commenters supporting an extension of the Transition Period overwhelmingly indicated their support for also extending the temporary enforcement policy in FAB 2017–02, to align the two periods.[35] These

and services. Such conditions would unduly pressure advice providers to engage in whatever behavior might be designated. Slanting advice in this manner, however favorably the Department or any other person might view a particular product or service or behavior, will necessarily constrain choice and options to the detriment of retirement savers. Making an advice provider's use of a specific product or service the price of avoiding the needless costs and investor confusion associated with the January 1 applicability date is not appropriate or warranted.'').

[30] *See, e.g.,* Comment Letter #64 (BlackRock) (''The uncertainty and confusion as to whether a particular firm is being held to a different legal standard than its peers would be detrimental to clients, investors and other stakeholders.''). *See also* Comment Letter #103 (Committee of Annuity Insurers) (stated that ''it could stifle innovation in product and advice models,'' that ''the Department should not substitute its own investment preferences for the preferences and insights of advisers,'' and that ''the conditional relief contemplated in the Department's proposal would be 'too imprecise' for any firm seeking to avail themselves of the potential relief.'').

[31] Comment Letter #86 (Spark Institute) (''The circumstances necessitating the existing Transition Period have not changed in any way since its announcement in the spring. The Department has not completed its examination and it has not announced whether, and how, the Investment Advice Regulation will be amended. Until the Department has completed both of those tasks, it should not alter its existing Transition Period rules in any way, other than to extend its expiration. Any contrary decision would result in significant market disruptions, substantial confusion, and would be difficult to monitor and administer.'').

[32] Due to the delay of certain exemption conditions as part of the April Delay Rule, the standards applicable to grandfathered assets and non-grandfathered assets during the Transition Period are similar. For this reason, the Department sees no compelling reason to extend grandfathering treatment through the Transition Period. The primary purpose of the grandfathering exemption was to preserve compensation for services rendered prior to the Fiduciary Rule and to permit orderly transition from past arrangements, not to exempt future advice and investments from important protections scheduled to become applicable after the Transition Period. Nevertheless, commenters are encouraged to supplement their comments on this point during the reexamination period.

[33] 29 U.S.C. 1108(a).

[34] 5 U.S.C. app at 214 (2000).

[35] *See, e.g.,* Comment Letter #29 (American Retirement Association) (''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 an enforcement action.''); Comment Letter #30 (Neuberger Berman Group) (''We unconditionally support the common sense answer that the Temporary Enforcement Policy be

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commenters believe such an alignment will significantly help to avoid market disruptions during the Transition Period. These commenters strongly oppose adding any new conditions to the enforcement policy during this period. They also request clarification that the relief under FAB 2017–02 is conditioned on diligent and good faith efforts to comply with the Fiduciary Rule and Impartial Conduct Standards, and does not also require diligent and good faith efforts towards implementing the delayed provisions of the PTEs.[36]

Although the Department has a statutory responsibility and broad authority to investigate or audit employee benefit plans and plan fiduciaries to ensure compliance with the law, compliance assistance for plan fiduciaries and other service providers is also a high priority for the Department. The Department has repeatedly said that its general approach to implementation will be marked by an emphasis on assisting (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 Rule and PTEs. Consistent with that approach, the Department has determined that extended temporary enforcement relief is appropriate and in the interest of plans, plan fiduciaries, plan participants and beneficiaries, IRAs, and IRA owners. Accordingly, during the phased implementation period from June 7, 2016, to July 1, 2019, the Department will not pursue claims against fiduciaries who are working diligently and in good faith to comply with the Fiduciary Rule and applicable provisions of the PTEs, or treat those fiduciaries as being in violation of the Fiduciary Rule and PTEs.[37] At the same time, however, the Department emphasizes, as it has in the past, that firms and advisers should work ''diligently and in good faith to comply'' [38] with their fiduciary obligations during the Transition Period. The ''basic fiduciary norms and standards of fair dealing'' [39] are still required of fiduciaries during the Transition Period.

Accordingly, as the Department reviews the compliance efforts of firms and advisers during the Transition Period, it will focus on the affirmative steps that firms have taken to comply with the Impartial Conduct Standards and to reduce the scope and severity of conflicts of interest that could lead to violations of those standards. The Department recognizes that the development of effective, long-term compliance solutions may take time, but it remains critically important that firms take action to ensure that investment recommendations are governed by the best interests of retirement investors, rather than the potentially competing financial incentives of the firm or adviser.

As the Department explained in previous guidance, although firms ''retain flexibility to choose precisely how to safeguard compliance with the Impartial Conduct Standards'' [40] during the Transition Period, they certainly may look to the specific provisions of the Best Interest Contract Exemption and Principal Transactions Exemption for guidance on ways to comply with the Impartial Conduct Standards. Thus, for example, the Department noted: ''Section IV of the BIC Exemption provides a detailed statement of how firms that limit adviser's investment recommendations to proprietary products or to investments that generate third party payments can comply with the best interest standard.'' ''If the firm and the adviser meet the terms of Section IV. . . they are 'deemed' to satisfy the best interest standard.'' [41] Thus, while firms are not required to rely on Section IV during the Transition Period, such reliance would certainly constitute good faith compliance.

The Department also remains ''broadly available to discuss compliance approaches and related issues with interested parties, and would invite interested parties to contact the Department'' [42] about the compliance approaches they have adopted or plan to adopt. This document accordingly supplements FAB 2017–02.

F. Regulatory Impact Analysis

The Department expects that the extension of the Transition Period under the BIC and Principal Transactions Exemptions and the delay of the amendments to PTE 84–24 (other than the Impartial Conduct Standards) will

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extended to line up with the final applicability dates in respect of those originally scheduled for January 1, 2018.''); Comment Letter #48 (American Council of Life Insurers) (''An extension of FAB 2017–02's temporary enforcement policy is consistent with the Department's stated 'good faith' compliance approach to implementation. . . .''); Comment Letter # 86 (Spark Institute) (''SPARK strongly supports an extension of the Department's temporary enforcement policy because of all of the uncertainty surrounding the future of the Investment Advice Regulation. The Department's proposal to extend the Transition Period notes that the Department is considering an extension of the Transition Period because it is still not known whether, and to what extent, there will be changes to the Department's interpretation of ''investment advice'' and the new and revised PTEs. Given this rationale, it simply would not make any sense for the Department to start enforcing portions of a regulation that is actively being reconsidered.''); Comment Letter #92 (E*TRADE) (''any delay should include a corresponding extension of Field Assistance Bulletin 2017–02. As firms are already subject to the Impartial Conduct Standards . . . we believe a corresponding extension of FAB 2017–02 will benefit financial service providers without harming retirement investors, while retaining enforcement powers for firms not implementing requirements in good faith.''); Comment Letter #128 (U.S. Chamber of Commerce) (''The Chamber believes the Department should extend the applicability of Field Assistance Bulletin 2017–02 from January 1, 2018, until the end of the Transition Period.'').

[36] *See, e.g.,* Comment Letter #28 (Empower Retirement) (''The relief offered under FAB 2017–02 was conditioned on fiduciaries working diligently and in good faith to comply with the fiduciary rule and exemptions. The DOL should make clear that this does not require continuing implementation efforts that would have been required for the January 1, 2018 applicability date, but is based on continued adherence to the Impartial Conduct Standards.''); Comment Letter #41 (Great-West Financial) (''To avoid disruption in the market, the DOL should refrain from adding new conditions but should simultaneously announce that the non-enforcement policy announced in FAB 2017–02 will be extended during the eighteen-month extension. The relief offered under FAB 2017–02 was conditioned on fiduciaries working diligently and in good faith to comply with the fiduciary duty rule and exemptions. The DOL should make clear that this does not require continuing implementation efforts that would have been required for the January 1, 2018 applicability date, but is based on continued adherence to the Impartial Conduct Standards.''). *See also* Comment Letter #82 (Standard Insurance Company and Standard Retirement Services, Inc.) (''we ask that The Department also extend the temporary enforcement policy providing relief to investment advice fiduciaries who are working in good faith to comply with the Regulations. Adding subjective requirements like 'taking steps toward innovations' would only add further uncertainty and confusion to the current situation.'').

[37] On March 28, 2017, the Treasury Department and the IRS issued IRS Announcement 2017–4 stating that the IRS will not apply § 4975 (which provides excise taxes relating to prohibited transactions) and related reporting obligations with respect to any transaction or agreement to which the Labor Department's temporary enforcement policy described in FAB 2017–01, or other subsequent related enforcement guidance, would apply. The Treasury Department and the IRS have confirmed that, for purposes of applying IRS Announcement 2017–4, the discussion in this document constitutes ''other subsequent related enforcement guidance.''

[38] *See* Conflict of Interest FAQs (Transition Period), May 2017, p.11. (*https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/coi-transition-period-1.pdf*); *see also* FAB 2017–02 (''The Department has repeatedly said that its general approach to implementation will be marked by an emphasis on assisting (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.'').

[39] Conflict of Interest FAQs (Transition Period), May 2017, p.3.

[40] *Id.* at p.6.

[41] *Id.* at p.6 n.4.

[42] *Id.* at p.6.

produce benefits that justify associated costs. These actions will avert the possibility of a costly and disorderly transition from the Impartial Conduct Standards to full compliance with the exemptions' conditions that ultimately could be modified or repealed, and thereby reduce some compliance costs. Similarly, it could avert the possibility of unnecessary costs to consumers as a result of an unnecessarily confusing or disruptive transition. As stated above, the Department currently is engaged in the process of reviewing the Fiduciary Rule and PTEs as directed in the Presidential Memorandum and reviewing comments received in response to the RFI. The delay will allow the Department to reexamine the Fiduciary Rule and PTEs and to update its economic analysis. The Department's objective is to complete its review pursuant to the President's Memorandum, analyze comments received in response to the RFI, determine whether future changes to the Fiduciary Rule and PTEs are necessary, and propose and finalize any changes to the Fiduciary Rule or PTEs sufficiently before July 1, 2019, to provide firms with sufficient time to design and implement an orderly transition to any new requirements.

If the Department revises or repeals some aspects of the Fiduciary Rule and PTEs in the future, the delay will allow affected firms to avoid incurring significant implementation costs now which later might turn out to be unnecessary. Furthermore, the delay will provide firms with more time to develop new products and practices that can provide long-term solutions for mitigating conflicts of interests. For example, a commenter cited numerous logistical obstacles that must be surmounted before using clean share classes in the market.[43] The delay provides firms with additional time to address these issues and successfully launch products that benefit investors. The delay also will provide the Department with time to consult further with other regulators including the NAIC and the SEC. Such consultations may advance the development of a regulatory framework that could promote market efficiency and transparency, while reducing the burden to the financial sector and associated consumer costs.

1. Executive Order 12866 Statement

This final rule is an economically significant action within the meaning of section 3(f)(1) of Executive Order 12866, because it would likely have an effect on the economy of $100 million in at least one year. Accordingly, the Department has considered the costs and benefits of the final rule, which has been reviewed by the Office of Management and Budget (OMB).

a. Investor Gains

Beginning on June 9, 2017, Financial Institutions and Advisers generally were required to (1) make recommendations that are in their client's best interest (*i.e.,* recommendations that are prudent and loyal), (2) avoid misleading statements, and (3) charge no more than reasonable compensation for their services. If they fully adhere to these requirements, the Department expects that affected investors will generally receive impartial advice and accordingly a significant portion of the gains it estimated in the 2016 RIA.[44] However, because the PTE conditions are intended to support and provide accountability mechanisms for such adherence and remedies for lapses thereof (*e.g.,* conditions requiring advisers to provide a written acknowledgement of their fiduciary status and adherence to the Impartial Conduct Standards and enter into enforceable contracts with IRA investors), the Department acknowledges that the delay may result in the loss or deferral of some of the estimated investor gains. On the other hand, potential revisions to PTE conditions may reduce costs and thereby yield additional investor gains.

The Department received many comments on the question of whether the delay would reduce investor gains. One group of commenters argued that the delay would not cause any harms to investors,[45] because the Impartial Conduct Standards already are in place and provide sufficient protection for investors.[46] They asserted that investor gains would be largely preserved during the extended transition period, because the investor gains primarily are derived from the expanded fiduciary status and the Impartial Conduct Standards, which already have taken effect, and this rule simply delays the implementation of some other exemption conditions.[47] Furthermore, these commenters urged the Department to weigh the harms to investors from not delaying the January 1, 2018, applicability date. According to them, there is no evidence that investors would be harmed by this delay, and because the Fiduciary Rule already has negatively affected many investors, they would suffer more harm if the remaining conditions of the PTEs were not delayed.[48]

Another group of commenters argued that the delay would cause significant losses to investors,[49] because they found that many financial services firms have preserved business models that the commenters view as conflict-laden and not made meaningful changes to root out conflicts of interest.[50] They also asserted that many financial services firms could flout the requirements of the Impartial Conduct Standards due to the lack of a strong enforcement mechanism in the retail IRA market and the Department's non-enforcement policy during the extended transition period.[51] To support their claims, these commenters cited media reports that financial services firms are not implementing further changes because they anticipate that the Department will issue a lengthy delay of the transition period [52] and some pockets of industry suspended their implementation.[53] One commenter referenced a market survey of broker-dealers in which many respondents reported that they have not yet made efforts to adhere to the Fiduciary Rule and the Impartial Conduct Standards.[54] For example, about 64 percent of surveyed broker-dealers responded that they have not

[43] Comment Letters #229 (Investment Company Institute) (dated July 21, 2017), #442 (Morningstar, Inc.) (dated August 3, 2017), and #594 (Fi360, Inc.) (dated August 7, 2017) (responding to RFI).

[44] The Department's baseline for this RIA includes all current rules and regulations governing investment advice including those that would become applicable on January 1, 2018, absent this delay. The RIA did not quantify incremental gains by each particular aspect of the rule and PTEs.

[45] *See, e.g.,* Comment Letter #11 (Alternative and Direct Securities Investment Association); Comment Letter #38 (Federated Investors, Inc.); Comment Letter #65 (Securities Industry and Financial Markets Association); Comment Letter #79 (Investment Company Institute).

[46] *See, e.g.,* Comment Letter #11 (Alternative and Direct Securities Investment Association).

[47] *See, e.g.,* Comment Letter #229 (Investment Company Institute) to the RFI; Comment Letter #79 (Investment Company Institute).

[48] *See, e.g.,* Comment Letter #65 (Securities Industry and Financial Markets Association).

[49] *See, e.g.,* Comment Letter #44 (Economic Policy Institute); Comment Letter #68 (AARP); Comment Letter #80 (Consumer Federation of America); Comment Letter #84 (Better Markets); Comment Letter #91 (Public Investors Arbitration Bar Association); Comment Letter #108 (American Association for Justice); Comment Letter #126 (Institute for Policy Integrity at New York University School of Law).

[50] *See, e.g.,* Comment Letter #80 (Consumer Federation of America).

[51] *See, e.g.,* Comment Letter #80 (Consumer Federation of America).

[52] Greg Iacurici, Investment News, August 16, 2017, ''Anticipating delay to DOL fiduciary rule, broker-dealers and RIAs change course.''

[53] Diana Britton, Wealth Management.com, June 19, 2017, ''DOL in the Real World.''

[54] Comment Letter #141 (Consumer Federation of America).

made any changes to the product mix; another 64 percent of broker-dealers responded that they have not made changes to their internal compensation arrangements to accommodate the Fiduciary Rule.[55] (It is unclear, however, whether the survey respondents accurately represent the overall industry.) Another commenter urged the Department to consider that the delay would unfairly harm firms that expended resources for timely compliance with the Fiduciary Rule and create an unlevel playing field with non-compliant firms.[56] One commenter estimated that an 18-month delay would cost investors about $10.9 billion over 30 years assuming a 50 percent compliance rate.[57] Based on this commenter's estimated investor losses, several commenters claimed that the Department cannot justify the delay because investor losses outweigh the estimated compliance cost savings.[58]

The Department carefully reviewed and weighed these comments and the referenced reports on potential investor losses caused by this delay. Steps some firms already have taken toward compliance, if not reversed, may limit investor losses. By some accounts,[59] compliance efforts may be most advanced among the larger firms that account for the majority of the market, so the number of retirement investors potentially benefiting from compliance efforts might be large. Firms may be especially motivated to comply in connection with advice on rollovers from ERISA-covered plans to IRAs, where they may face liability for any fiduciary breaches under ERISA itself. Nonetheless, gaps in compliance may subject investors to some potentially avoidable losses, of uncertain incidence and magnitude.

These potential losses, however, must be weighed against the costs that firms and investors would incur if the January 1, 2018 applicability date were not delayed. Absent delay, firms would be forced to rush to comply with provisions that the Department may soon revise or rescind. Notwithstanding whatever steps firms already have taken toward compliance, it is likely that for many, such a rush to comply would be costly, disruptive, and/or infeasible. Smaller firms, which may be least prepared to comply fully, might be affected most. The disruption also could adversely affect many investors. Some of the costs incurred could turn out to be wasted if costly provisions are later revised or rescinded—and subsequent implementation of revised provisions might sow confusion and yield additional disruption. This delay will avert such disruption along with the potentially wasted cost of complying with provisions that the Department later revises or rescinds. In addition, the Department notes that some commenters' observations that investor losses from this delay may exceed associated compliance cost savings do not reflect the totality of economic considerations properly at hand. While some investor losses will reflect decreases in overall social welfare, others will reflect transfers from investors to the financial industry, which, while undesirable, are not social costs per se. Compliance costs in turn represent only some of the societal costs that may be averted by this delay. Others include those attributable to the potential disruption and confusion that could adversely affect both firms and investors.

The Department acknowledges uncertainty surrounding potential investor losses from this delay. On balance, however, the Department concludes that the delay is justified, insofar as avoiding the market disruption that would occur if regulated parties incur costs to comply quickly with conditions or requirements the Department subsequently revises or repeals and the resultant significant consumer confusion justifies any attendant investor losses.

b. Cost Savings

Some firms that are fiduciaries under the Fiduciary Rule may have committed resources to implementing procedures to support compliance with their fiduciary obligations. This may include changing their compensation structures and monitoring the practices and procedures of their advisers to ensure that conflicts of interest do not cause violations of the Fiduciary Rule and Impartial Conduct Standards of the PTEs, and maintaining sufficient records to corroborate that they are complying with the Fiduciary Rule and PTEs. These firms have considerable flexibility to choose precisely how they will achieve compliance with the PTEs during the extended transition period. According to some commenters, the majority of broker-dealers have not yet made any changes to their internal compensation arrangements and have not fully developed monitoring systems.[60] The Department does not have sufficient data to estimate such costs; therefore, they are not quantified here.

Some commenters have asserted that the delay could result in cost savings for firms compared to the costs that were estimated in the Department's 2016 RIA to the extent that the requirements of the Fiduciary Rule and PTE conditions are modified in a way that would result in less expensive compliance costs. However, the Department generally believes that start-up costs not yet incurred for requirements previously scheduled to become applicable on January 1, 2018, should not be included, at this time, as a cost savings associated with this rule because the rule would merely delay the full implementation of certain conditions in the PTEs until July 1, 2019, while the Department considers whether to propose changes and alternatives to the exemptions. The Department would be required to assume for purposes of this regulatory impact analysis that those start-up costs that have not been incurred generally would be delayed rather than avoided unless or until the Department acts to modify the compliance obligations of firms and advisers to make them more efficient. Nonetheless, even based on that assumption, there may be some cost savings that could be quantified as arising from the delay because some ongoing costs would not be incurred until July 1, 2019. The Department has taken two approaches to quantifying the savings resulting from the delay in incurring such ongoing costs: (1) Quantifying the costs based on a shift in the time horizon of the costs (*i.e.,* comparing the present value of the costs of complying over a ten year period beginning on January 1, 2018, with the costs of complying, instead, over a ten year period beginning on July 1, 2019); and (2) quantifying the reduced costs during the 18-month period of delay from January 1, 2018, to July 1, 2019, during which time regulated parties would otherwise have had to comply with the full conditions of the BIC

[55] John Crabb, International Financial Law Review, October 2017, ''The Fiduciary Rule Poll.''

[56] Comment Letter #84 (Better Markets).

[57] *See* Comment Letter #44 (Economic Policy Institute). According to this comment, the investor losses over 30 years would range from $5.5 billion (75 percent compliance rate) to $16.3 billion (25 percent compliance rate).

[58] *See, e.g.,* Comment Letter #80 (Consumer Federation of America); Comment Letter #91 (Public Investors Arbitration Bar Association); Comment Letter #120 (AFL–CIO); Comment Letter #126 (Institute for Policy Integrity at New York University School of Law).

[59] John Crabb, International Financial Law Review, October 2017, ''The Fiduciary Rule Poll.'' According to this report, some firms already adopted fiduciary standards for business reasons; therefore, they would continue to comply with the rule using the adopted changes during this transition period.

[60] *See, e.g.,* Comment Letter #80 (Consumer Federation of America); Greg Iacurici, Investment News, August 16, 2017, ''Anticipating delay to DOL fiduciary rule, broker-dealers and RIAs change course.''

Exemption and Principal Transaction Exemption but for the delay.

The first of the two approaches reflects the time value of money (*i.e.,* the idea that money available at the present time is worth more than the same amount of money in the future, because that money can earn interest). The deferral of ongoing costs by 18 months will allow the regulated community to use money they would have spent on ongoing compliance costs for other purposes during that time period. The Department estimates that the ten-year present value of the cost savings arising from this 18 month deferral of ongoing compliance costs, and the regulated community's resulting ability to use the money for other purposes, is $551.6 million using a three percent discount rate [61] and $1.0 billion using a seven percent discount rate.[62]

The second of the two approaches simply estimates the expenses foregone during the period from January 1, 2018, to July 1, 2019, as a result of the delay. When the Department published the Fiduciary Rule and accompanying PTEs, it calculated that the total ongoing compliance costs of the Fiduciary Rule and PTEs were $1.5 billion annually. Therefore, the Department estimates the ten-year present value of the cost savings of firms not being required to incur ongoing compliance costs during an 18 month delay would be approximately $2.2 billion using a three percent discount rate [63] and $2.0 billion using a seven percent discount rate.[64] [65]

Based on its progress thus far with the review and reexamination directed by the President, however, the Department believes there may be evidence supporting alternatives that reduce costs and increase benefits to all affected parties, while maintaining protections for retirement investors. The Department anticipates that it will have a clearer sense of the range of such alternatives once it completes a careful review of the data and evidence submitted in response to the RFI.

The Department also cannot determine at this time the degree to which the infrastructure that affected firms have already established to ensure compliance with the Fiduciary Rule and PTEs exemptions would be sufficient to facilitate compliance with the Fiduciary Rule and PTEs conditions if they are modified in the future.

c. Alternatives Considered

While the Department considered several alternatives that were informed by public comments, the Department's chosen alternative in this final rule is likely to yield the most desirable outcome, including avoidance of investor losses otherwise associated with costly market disruptions. In weighing different options, the Department took numerous factors into account. The Department's objective was to facilitate orderly marketplace innovation and avoid unnecessary confusion and uncertainty in the investment advice market and associated expenses for America's workers and retirees.

The Department solicited comments at the proposed rule stage regarding whether it should adopt an extension that would end (1) a specified period after the occurrence of a specific event (a contingent approach) or (2) on the earlier or the later of (a) a time certain and (b) the end of a specified period after the occurrence of a specific event (a tiered approach). Several commenters supported a contingent or tiered approach,[66] while others expressed concern that a potentially indefinite delay might erode compliance with the Impartial Conduct Standards. The Department decided not to adopt these approaches, because they could inject too much uncertainty into the market and cause investor confusion.

As discussed above in this preamble, some commenters urged the Department to require firms to comply with the original transitional requirements of the exemptions, not just the Impartial Conduct Standards.[67] The Department declines this suggestion for now but agrees to give the matter further consideration during the course of the reexamination. The efficacy and effect of these transitional requirements need to be considered very carefully as the Department considers possible changes to the exemptions and their disclosure requirements. The Department is concerned that after completing its reexamination, it might change the disclosure requirements, the implementation of which would have imposed approximately $50.4 million of operational costs [68] plus additional start-up costs.

The Department also considered not extending the transition period, which would mean that the remaining conditions in the PTEs would become applicable on January 1, 2018. The Department rejected this alternative because it would not provide sufficient time for the Department to complete its ongoing review of, or propose and finalize any changes to the Fiduciary Rule and PTEs. Moreover, absent the extended transition period, Financial Institutions and Advisers would feel compelled to prepare for full compliance with PTE conditions that become applicable on January 1, 2018, despite the possibility that the Department might identify and adopt more efficient alternatives or other significant changes to the rule. This could lead to unnecessary compliance costs and market disruptions. As compared to a shorter delay with the

[61] Annualized over ten years to $64.7 million per year or over a perpetual time horizon, discounted back to 2016, to $15.6 million per year.

[62] Annualized over ten years to $143.9 million per year or over a perpetual time horizon, discounted back to 2016, to $61.8 million per year.

[63] Annualized over ten years to $252.1 million per year or over a perpetual time horizon, discounted back to 2016, to $57.3 million per year.

[64] Annualized over ten years to $291.1 million per year or over a perpetual time horizon, discounted back to 2016, to $109.2 million per year.

[65] The Department notes that firms may be incurring some costs to comply with the impartial conduct standards; however, it does not have sufficient data to estimate these costs. The Department, as it continues to update its analysis of the rule, solicits comments on the costs of complying with the impartial conduct standards, and how these costs interact with the costs of all other facets of compliance with the conditions of the PTEs.

[66] *See, e.g.,* Comment Letter #48 (American Council of Life Insurers); Comment Letter #51 (Morgan Stanley); Comment Letter #57 (Pacific Life Insurance Company); Comment Letter #73 (Raymond James Financial); Comment Letter #82 (Standard Insurance Company and Standard Retirement Services, Inc.); Comment Letter #112 (Northwestern Mutual Life Insurance Company); Comment Letter #121 (HSBC North America Holdings Inc.); Comment Letter #124 (Morgan, Lewis & Bockius LLP).

[67] *See, e.g.* Comment Letter #80 (Consumer Federation of America) (''at a bare minimum, the Department must require firms and advisers to comply with the original transitional requirements of the exemptions, as set forth in Section IX of the BIC Exemption and Section VII of the Principal Transactions Exemption, not just the Impartial Conduct Standards. These include: (1) The minimal transition written disclosure requirements in which firms acknowledge their fiduciary status and that of their advisers with respect to their advice, state the Impartial Conduct Standards and provide a commitment to adhere to them, and describe the firm's material conflicts of interest and any limitations on product offering; (2) the requirement that firms designate a person responsible for addressing material conflicts of interest and monitoring advisers' adherence to the Impartial Conduct Standards; and (3) the requirement that firms maintain records necessary to prove that the conditions of the exemption have been met.'').

[68] Using the same methodology that was used to calculate the burden of the transition disclosure that was originally envisioned in the April 2016 final rule and exemptions, the Department estimates that during the transition period, 34.2 million transition disclosures would be produced to comply with the requirements of the Best Interest Contract Exemption at a cost of $47.2 million, and 2.7 million transition disclosures would be produced to comply with the requirements of the Principal Transactions Exemption at a cost of $3.2 million. These estimates assume that all investment advice clients receiving advice covered by the applicable exemptions between January 1, 2018 and December 31, 2018 would receive the transition disclosures and all new investment advice clients receiving advice covered by the applicable exemptions between January 1, 2019 and June 30, 2019 would receive the transition disclosures.

possibility of consecutive additional delays, if needed, the 18-month delay provides more certainty for affected stakeholders because it sets a firm date for full compliance, which allows for proper planning and reliance.

2. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501, *et seq.*) prohibits federal agencies from conducting or sponsoring a collection of information from the public without first obtaining approval from the Office of Management and Budget (OMB). See 44 U.S.C. 3507. Additionally, members of the public are not required to respond to a collection of information, nor be subject to a penalty for failing to respond, unless such collection displays a valid OMB control number. See 44 U.S.C. 3512.

OMB has previously approved information collections contained in the Fiduciary Rule and PTEs. The Department now is extending the transition period for the full conditions of the PTEs associated with its Fiduciary Rule until July 1, 2019. The Department is not modifying the substance of the information collections at this time; however, the current OMB approval periods of the information collection requests (ICRs) expire before the new applicability date for the full conditions of the PTEs as they currently exist. Therefore, many of the information collections will remain inactive for the remainder of the current ICR approval periods. The ICRs contained in the exemptions are discussed below.

PTE 2016–01, the Best Interest Contract Exemption: The information collections in PTE 2016–01, the BIC Exemption, are approved under OMB Control Number 1210–0156 through June 30, 2019. The exemption requires disclosure of material conflicts of interest and basic information relating to those conflicts and the advisory relationship (Sections II and III), contract disclosures, contracts and written policies and procedures (Section II), pre-transaction (or point of sale) disclosures (Section III(a)), web-based disclosures (Section III(b)), documentation regarding recommendations restricted to proprietary products or products that generate third-party payments (Section IV), notice to the Department of a Financial Institution's intent to rely on the PTE, and maintenance of records necessary to prove that the conditions of the PTE have been met (Section V). Although the start-up costs of the information collections as they are set forth in the current PTE may not be incurred prior to June 30, 2019 due to uncertainty surrounding the Department's ongoing consideration of whether to propose changes and alternatives to the exemptions, they are reflected in the revised burden estimate summary below. The ongoing costs of the information collections will remain inactive through the remainder of the current approval period.

For a more detailed discussion of the information collections and associated burden of this PTE, see the Department's PRA analysis at 81 FR 21002, 21071.

PTE 2016–02, the Prohibited Transaction Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Principal Transactions Exemption): The information collections in PTE 2016–02, the Principal Transactions Exemption, are approved under OMB Control Number 1210–0157 through June 30, 2019. The exemption requires Financial Institutions to provide contract disclosures and contracts to Retirement Investors (Section II), adopt written policies and procedures (Section IV), make disclosures to Retirement Investors and on a publicly available Web site (Section IV), maintain records necessary to prove they have met the PTE conditions (Section V). Although the start-up costs of the information collections as they are set forth in the current PTE may not be incurred prior to June 30, 2019, due to uncertainty surrounding the Department's ongoing consideration of whether to propose changes and alternatives to the exemptions, they are reflected in the revised burden estimate summary below. The ongoing costs of the information collections will remain inactive through the remainder of the current approval period.

For a more detailed discussion of the information collections and associated burden of this PTE, see the Department's PRA analysis at 81 FR 21089, 21129.

Amended PTE 84–24: The information collections in Amended PTE 84–24 are approved under OMB Control Number 1210–0158 through June 30, 2019. As amended, Section IV(b) of PTE 84–24 requires Financial Institutions to obtain advance written authorization from an independent plan fiduciary or IRA holder and furnish the independent fiduciary or IRA holder with a written disclosure in order to receive commissions in conjunction with the purchase of insurance and annuity contracts. Section IV(c) of PTE 84–24 requires investment company Principal Underwriters to obtain approval from an independent fiduciary and furnish the independent fiduciary with a written disclosure in order to receive commissions in conjunction with the purchase by a plan of securities issued by an investment company Principal Underwriter. Section V of PTE 84–24, as amended, requires Financial Institutions to maintain records necessary to demonstrate that the conditions of the PTE have been met.

The rule delays the applicability date of amendments to PTE 84–24 until July 1, 2019, except that the Impartial Conduct Standards became applicable on June 9, 2017. The Department does not have sufficient data to estimate that number of respondents that will use PTE 84–24 with the inclusion of Impartial Conduct Standards but delayed applicability date of amendments. Therefore, the Department has not revised its burden estimate.

For a more detailed discussion of the information collections and associated burden of this PTE, see the Department's PRA analysis at 81 FR 21147, 21171.

These paperwork burden estimates, which comprise start-up costs that will be incurred prior to the July 1, 2019, effective date (and the June 30, 2019, expiration date of the current approval periods), are summarized as follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Titles: (1) Best Interest Contract Exemption and (2) Final Investment Advice Regulation.

OMB Control Number: 1210–0156.

Affected Public: Businesses or other for-profits; not for profit institutions.

Estimated Number of Respondents: 19,890 over the three-year period; annualized to 6,630 per year.

Estimated Number of Annual Responses: 34,046,054 over the three-year period; annualized to 11,348,685 per year.

Frequency of Response: When engaging in exempted transaction.

Estimated Total Annual Burden Hours: 2,125,573 over the three-year period; annualized to 708,524 per year.

Estimated Total Annual Burden Cost: $2,468,487,766 during the three-year period; annualized to $822,829,255 per year.

Agency: Employee Benefits Security Administration, Department of Labor.

Titles: (1) Prohibited Transaction Exemption for Principal Transactions in Certain Assets between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs and (2) Final Investment Advice Regulation.

OMB Control Number: 1210–0157.

Affected Public: Businesses or other for-profits; not for profit institutions.

Estimated Number of Respondents: 6,075 over the three-year period; annualized to 2,025 per year.

Estimated Number of Annual Responses: 2,463,802 over the three-year period; annualized to 821,267 per year.

Frequency of Response: When engaging in exempted transaction; Annually.

Estimated Total Annual Burden Hours: 45,872 over the three-year period; annualized to 15,291 per year.

Estimated Total Annual Burden Cost: $1,955,369,661 over the three-year period; annualized to $651,789,887 per year.

Agency: Employee Benefits Security Administration, Department of Labor.

Titles: (1) Prohibited Transaction Exemption (PTE) 84–24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies and Investment Company Principal Underwriters and (2) Final Investment Advice Regulation.

OMB Control Number: 1210–0158.

Affected Public: Businesses or other for-profits; not for profit institutions.

Estimated Number of Respondents: 21,940.

Estimated Number of Annual Responses: 3,306,610.

Frequency of Response: Initially, Annually, When engaging in exempted transaction.

Estimated Total Annual Burden Hours: 172,301 hours.

Estimated Total Annual Burden Cost: $1,319,353.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal Rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other laws. Unless the head of an agency certifies that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires that the agency present a final regulatory flexibility analysis (FRFA) describing the rule's impact on small entities and explaining how the agency made its decisions with respect to the application of the rule to small entities. Small entities include small businesses, organizations and governmental jurisdictions.

The final rule merely extends the transition period for the PTEs associated with the Fiduciary Rule. The impact on small entities will be determined when the Department issues future guidance after concluding its review of the rule and exemption. Any future guidance will be subject to notice and comment and contain a Regulatory Flexibility Act analysis. Accordingly, pursuant to section 605(b) of the RFA, the Deputy Assistant Secretary of the Employee Benefits Security Administration hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

4. Congressional Review Act

This final rule is subject to the Congressional Review Act (CRA) provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The final rule is a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is likely to result in an annual effect on the economy of $100 million or more.

5. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this final rule does not include any federal mandate that the Department expects would result in such expenditures by State, local, or tribal governments, or the private sector. The Department also does not expect that the delay will have any material economic impacts on State, local or tribal governments, or on health, safety, or the natural environment.

6. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

The impacts of this final rule are categorized consistently with the analysis of the original Fiduciary Rule and PTEs, and the Department has also concluded that the impacts identified in the RIA accompanying the Fiduciary Rule may still be used as a basis for estimating the potential impacts of this final rule. It has been determined that, for purposes of E.O. 13771, the impacts of the Fiduciary Rule that were identified in the 2016 analysis as costs, and that are presently categorized as cost savings (or negative costs) in this final rule, and impacts of the Fiduciary Rule that were identified in the 2016 analysis as a combination of transfers and positive benefits are categorized as a combination of (opposite-direction) transfers and negative benefits in this final rule. Accordingly, OMB has determined that this final rule is an E.O. 13771 deregulatory action.

G. List of Amendments to Prohibited Transaction Exemptions

The Secretary of Labor has discretionary authority to grant administrative exemptions under ERISA and the Code on an individual or class basis, but only if the Secretary first finds that the exemptions are (1) administratively feasible, (2) in the interests of plans and their participants and beneficiaries and IRA owners, and (3) protective of the rights of the participants and beneficiaries of such plans and IRA owners. 29 U.S.C. 1108(a); see also 26 U.S.C. 4975(c)(2). The Secretary of Labor has found that the delay finalized below is: (1) Administratively feasible, (2) in the interests of plans and their participants and beneficiaries and IRA owners, and (3) protective of the rights of participants and beneficiaries of such plans and IRA owners.

Under this authority, and based on the reasons set forth above, the Department is amending the: (1) Best Interest Contract Exemption (PTE 2016–01); (2) Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016–02); and (3) Prohibited Transaction Exemption 84–24 (PTE 84–24) for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters, as set forth below. These amendments are effective on January 1, 2018.

1. The BIC Exemption (PTE 2016–01) is amended as follows:

A. The date ''January 1, 2018'' is deleted and ''July 1, 2019'' inserted in its place in the introductory **DATES** section.

B. *Section II(h)(4)—Level Fee Fiduciaries* provides streamlined conditions for ''Level Fee Fiduciaries.'' The date ''January 1, 2018'' is deleted and ''July 1, 2019'' inserted in its place. Thus, for Level Fee Fiduciaries that are robo-advice providers, and therefore not eligible for Section IX (pursuant to Section IX(c)(3)), the Impartial Conduct Standards in Section II(h)(2) are applicable June 9, 2017, but the remaining conditions of Section II(h) are applicable July 1, 2019, rather than January 1, 2018.

C. *Section II(a)(1)(ii)* provides for the amendment of existing contracts by negative consent. The date ''January 1, 2018'' is deleted where it appears in this section, including in the definition of ''Existing Contract,'' and ''July 1, 2019'' inserted in its place.

D. *Section IX—Transition Period for Exemption.* The date ''January 1, 2018'' is deleted and ''July 1, 2019'' inserted in its place. Thus, the Transition Period identified in Section IX(a) is extended from June 9, 2017, to July 1, 2019, rather than June 9, 2017, to January 1, 2018.

2. The Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016–02), is amended as follows:

A. The date ''January 1, 2018'' is deleted and ''July 1, 2019'' inserted in its place in the introductory **DATES** section.

B. *Section II(a)(1)(ii)* provides for the amendment of existing contracts by negative consent. The date ''January 1, 2018'' is deleted where it appears in this section, including in the definition of ''Existing Contract,'' and ''July 1, 2019'' inserted in its place.

C. *Section VII—Transition Period for Exemption.* The date ''January 1, 2018'' is deleted and ''July 1, 2019'' inserted in its place. Thus, the Transition Period identified in Section VII(a) is extended from June 9, 2017, to July 1, 2019, rather than June 9, 2017, to January 1, 2018.

3. Prohibited Transaction Exemption 84–24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters, is amended as follows:

A. The date ''January 1, 2018'' is deleted where it appears in the introductory **DATES** section and ''July 1, 2019'' inserted in its place.

Signed at Washington, DC, this 24th day of November 2017.

Jeanne Klinefelter Wilson,

Acting Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2560

RIN 1210–AB39

Claims Procedure for Plans Providing Disability Benefits; 90-Day Delay of Applicability Date

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule; delay of applicability date.

SUMMARY: This document delays for ninety (90) days—through April 1, 2018—the applicability of a final rule amending the claims procedure requirements applicable to ERISA-covered employee benefit plans that provide disability benefits (Final Rule). The Final Rule was published in the **Federal Register** on December 19, 2016, became effective on January 18, 2017, and was scheduled to become applicable on January 1, 2018. The delay announced in this document is necessary to enable the Department of Labor to carefully consider comments and data as part of its effort, pursuant to Executive Order 13777, to examine regulatory alternatives that meet its objectives of ensuring the full and fair review of disability benefit claims while not imposing unnecessary costs and adverse consequences.

DATES: The amendments are effective on January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Frances P. Steen, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

A. Background

Section 503 of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), requires that every employee benefit plan shall establish and maintain reasonable procedures governing the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations. In accordance with its authority under ERISA section 503, and its general regulatory authority under ERISA section 505, the Department of Labor (''Department'') previously established regulations setting forth minimum requirements for employee benefit plan procedures pertaining to claims for benefits by participants and beneficiaries. 29 CFR 2560.503–1.

On December 19, 2016, the Department published a final regulation (''Final Rule'') amending the existing claims procedure regulation; the Final Rule revised the claims procedure rules for ERISA-covered employee benefit plans that provide disability benefits. The Final Rule was made effective January 18, 2017, but the Department delayed its applicability until January 1, 2018, in order to provide adequate time for disability benefit plans and their affected service providers to adjust to it, as well as for consumers and others to understand the changes made.

On February 24, 2017, the President issued Executive Order 13777 (''E.O. 13777''), entitled Enforcing the Regulatory Reform Agenda.[1] E.O. 13777 is intended to reduce the regulatory burdens agencies place on the American people, and directs federal agencies to undertake specified activities to accomplish that objective. As a first step, E.O. 13777 requires the designation of a Regulatory Reform Officer and the establishment of a Regulatory Reform Task Force within each federal agency covered by the Order. The Task Forces were directed to evaluate existing regulations and make recommendations regarding those that can be repealed, replaced, or modified to make them less burdensome. E.O. 13777 also requires that Task Forces seek input from entities significantly affected by regulations, including state, local and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.

Not long thereafter, certain stakeholders asserted in writing that the Final Rule will drive up disability benefit plan costs, cause an increase in litigation, and consequently impair workers' access to disability insurance protections.[2] In support of these assertions, the stakeholders said, among

[1] 82 FR 12285 (March 1, 2017).

[2] Some of the stakeholders also asserted a comment that was previously provided with respect to the 2015 proposed amendments, specifically that the Department exceeded its authority and acted contrary to Congressional intent by applying certain ACA protections to disability benefit claims, arguing that if Congress had wanted these protections to apply to disability benefit claims, it would have expressly extended the claims and appeals rules in section 2719 of the Public Health Service Act to plans that provide disability benefits. However, the Department did not take the position that the ACA compelled the changes in the Final Rule. Rather, because disability claims commonly involve medical considerations, the Department was of the view that disability benefit claimants should receive procedural protections similar to those that apply to group health plans, and thus it made sense to model the Final Rule on procedural protections and consumer safeguards that Congress established for group health care claimants under the ACA.