ASO GA E5 Savannah, GA [Amended]

Savannah/Hilton Head International Airport, GA

(Lat. 32°07′39″ N., long. 81°12′08″ W.)

Hunter AAF

(Lat. 32°00′36″ N., long. 81°08′46″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Savannah/Hilton Head International Airport and within a 7-mile radius of Hunter AAF.

Issued in College Park, Georgia, on March 27, 2017.

Joey L. Medders,

Acting Manager, Operations Support Group, Eastern Service Area, Air Traffic Organization.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210–AB79

Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice; Best Interest Contract Exemption (Prohibited Transaction Exemption 2016–01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016–02); Prohibited Transaction Exemptions 75–1, 77–4, 80–83, 83–1, 84–24 and 86–128

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule; extension of applicability date.

SUMMARY: This document extends for 60 days the applicability date of the final regulation, published on April 8, 2016, defining who is a ''fiduciary'' under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986. It also extends for 60 days the applicability dates of the Best Interest Contract Exemption and the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs. It requires that fiduciaries relying on these exemptions for covered transactions adhere only to the Impartial Conduct Standards (including the ''best interest'' standard), as conditions of the exemptions during the transition period from June 9, 2017, through January 1, 2018. Thus, the fiduciary definition in the rule (Fiduciary Rule or Rule) published on April 8, 2016, and Impartial Conduct Standards in these exemptions, are applicable on June 9, 2017, while compliance with the remaining conditions in these exemptions, such as requirements to make specific written disclosures and representations of fiduciary compliance in communications with investors, is not required until January 1, 2018. This document also delays the applicability of amendments to Prohibited Transaction Exemption 84–24 until January 1, 2018, other than the Impartial Conduct Standards, which will become applicable on June 9, 2017. Finally, this document extends for 60 days the applicability dates of amendments to other previously granted exemptions. The President, by Memorandum to the Secretary of Labor dated February 3, 2017, directed the Department of Labor to examine whether the Fiduciary Rule may adversely affect the ability of Americans to gain access to retirement information and financial advice, and to prepare an updated economic and legal analysis concerning the likely impact of the Fiduciary Rule as part of that examination. The extensions announced in this document are necessary to enable the Department to perform this examination and to consider possible changes with respect to the Fiduciary Rule and PTEs based on new evidence or analysis developed pursuant to the examination.

DATES: *Effective dates:* This rule is effective April 10, 2017. The end of the effective period for 29 CFR 2510.3–21(j) is extended from April 10, 2017, to June 9, 2017.

Applicability dates: See Section E of the **SUPPLEMENTARY INFORMATION** section for dates for the prohibited transaction exemptions.

FOR FURTHER INFORMATION CONTACT:

- For questions pertaining to the fiduciary regulation, contact Jeffrey Turner, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693–8825.
- For questions pertaining to the prohibited transaction exemptions, contact Karen Lloyd, Office of Exemption Determinations, EBSA, (202) 693–8824.
- For questions pertaining to regulatory impact analysis, contact G. Christopher Cosby, Office of Policy and Research, EBSA, (202) 693–8425. (Not toll-free numbers).

SUPPLEMENTARY INFORMATION:

A. Background

On April 8, 2016, the Department of Labor (Department) published a final regulation (Fiduciary Rule or Rule) defining who is a ''fiduciary'' of an employee benefit plan under section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) as a result of giving investment advice to a plan or its participants or beneficiaries. 29 CFR 2510.3–21. The Fiduciary Rule also applies to the definition of a ''fiduciary'' of a plan (including an individual retirement account (IRA)) under section 4975(e)(3)(B) of the Internal Revenue Code of 1986 (Code). 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 of the prior regulatory definition (1975 Regulation).[1]

On this 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. The new exemptions are designed to promote the provision of investment advice that is in the best interest of retirement investors.

The new exemptions and certain previously granted exemptions that were amended on April 8, 2016 (collectively Prohibited Transaction Exemptions or PTEs) would allow, subject to appropriate safeguards, certain broker-dealers, insurance agents, and others that act as investment advice fiduciaries, as defined under the Fiduciary Rule, to continue to receive compensation that would otherwise violate prohibited transaction rules, triggering excise taxes and civil liability. Rather than flatly prohibit compensation structures that could be beneficial in the right circumstances, the exemptions are designed to permit investment advice fiduciaries to receive commissions and other common forms of compensation.

Among other conditions, the new exemptions and amendments to previously granted exemptions are generally conditioned on adherence to certain Impartial Conduct Standards:

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

Providing advice in retirement investors' best interest; charging no more than reasonable compensation; and avoiding misleading statements (Impartial Conduct Standards).[2] The Department determined that adherence to these fundamental fiduciary norms helps ensure that investment recommendations are not driven by adviser conflicts, but by the best interest of the retirement investor.

By Memorandum dated February 3, 2017, the President directed the Department to conduct an examination of the Fiduciary Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice. As part of this examination, the Department was directed to prepare an updated economic and legal analysis concerning the likely impact of the Fiduciary Rule and PTEs, which shall consider, among other things:

- Whether the anticipated applicability of the Fiduciary Rule and PTEs has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice;
- Whether the anticipated applicability of the Fiduciary Rule and PTEs has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees; and
- Whether the Fiduciary Rule and PTEs is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services.

The President directed that if the Department makes an affirmative determination as to any of the above three considerations, or the Department concludes for any other reason, after appropriate review, that the Fiduciary Rule, PTEs, or both are inconsistent with the priority of the Administration ''to empower Americans to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses, such as buying a home and paying for college, and to withstand unexpected financial emergencies,'' then the Department shall publish for notice and comment a proposed rule rescinding or revising the Fiduciary Rule, as appropriate and as consistent with law. The President's Memorandum was published in the **Federal Register** on February 7, 2017, at 82 FR 9675.

In accordance with that memorandum, the Department published in the **Federal Register** on March 2, 2017, at 82 FR 12319, a document seeking comment on a proposed 60-day extension of the applicability dates of the Fiduciary Rule and PTEs until June 9, 2017 (NPRM). The comment period on the proposed extension ended on March 17, 2017. In that same document, the Department sought comments regarding the examination described in the President's Memorandum and on more general questions concerning the Fiduciary Rule and PTEs. This comment period ends on April 17, 2017.

B. Public Comments & Decision on Delay

As of the close of the first comment period on March 17, 2017, the Department had received approximately 193,000 comment and petition letters expressing a wide range of views on whether the Department should grant a delay and the duration of any delay. Approximately 15,000 commenters and petitioners support 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); and, by contrast, 178,000 commenters and petitioners oppose any delay whatsoever.[3] The Department continues to receive a very high volume of comment and petition letters on a daily basis, both on the delay and on the more general questions that the Department set forth in its NPRM. EBSA intends to continue to post comment and petition letters for public inspection on EBSA's Web site as quickly as practicable after receipt.

One of the main reasons offered by commenters and petitioners in support of a delay of the applicability date of the Fiduciary Rule and PTEs is that the Department needs time to properly conduct the analysis required by the President's Memorandum. Although many commenters supported a 60-day delay for this purpose, others argued that a much longer period is needed (*e.g.,* a 1-year delay or an indefinite extension terminating 60 or more days after completion of the examination required by the President's Memorandum). These commenters asserted that unless the Department took such an approach, it could be forced to grant a series of short extensions, which would produce serious frictional costs, protracted uncertainty (for advisers, financial institutions, and retirement investors), wasted expenses on interim and conditional compliance efforts, and unnecessary market disruption. Many commenters also requested that any delay of the applicability date, regardless of its length, be accompanied by a commensurate adjustment in the periods of transition relief available under the BIC Exemption and the Principal Transactions Exemption.

Many supporters of delay also argued that the President's Memorandum has rendered the ultimate fate of the Fiduciary Rule and PTEs uncertain and that proceeding with the April 10, 2017 applicability date in the face of this uncertainty would impose unnecessary costs and burdens on the financial services industry and result in unnecessary confusion to investors inasmuch as products, services, and advisory practices could change after completion of the examination. Some expressed particular concern about the risk of a chaotic transition process, as firms try to communicate with millions of clients to describe options that could become applicable in April, but subsequently change if parts of the Fiduciary Rule or PTEs are later reconsidered and changed after the examination required by the President.

Another theme of commenters and petitioners supporting delay is that, even without regard to the President's Memorandum, the Department initially erred in adopting April 10, 2017, as the applicability date of the Fiduciary Rule and PTEs. These commenters assert that although financial institutions have worked to put in place the policies and procedures necessary to make the business structure and practice shifts required by the new rules,[4] there is still considerable work left to be done to implement the new rules in a proper and responsible manner and without

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[2] 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.'' Accordingly, references in this document to ''reasonable compensation'' in the context of the Principal Transactions Exemption should be read to refer to this best execution requirement.

[3] 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 treated as supporting the Rule and PTEs as originally drafted including support for the April 10, 2017 applicability date, and were therefore treated as opposing a delay.

[4] This includes drafting and implementing training for staff, drafting client correspondence and explanations of revised product and service offerings, negotiating changes to agreements with product manufacturers to facilitate compliance, and changing employee and agent compensation structures, among other things.

causing further confusion and disruption to retirement investors. Some of these commenters and petitioners also asserted that individual retirement investors—those most impacted by the Fiduciary Rule and PTEs—have not themselves focused on how investment products, related services, and costs may change and need more time to understand, process, and make decisions regarding their accounts and services.

Many commenters also based support for delay on opposition to the substance of the Fiduciary Rule and PTEs, as written, and disagreement with the conclusions reached in the final rulemaking and associated Regulatory Impact Analysis. In general, these comments reiterated arguments made as part of the notice and comment process for the Rule and PTEs.[5] For example, commenters asserted that the Fiduciary Rule and PTEs would unduly increase costs and adversely affect access to products, services, and advice. Industry commenters, in particular, asserted that unintended consequences of the rulemaking could include the reduced availability of advice to participants with small account balances, such as young savers; inappropriate increases in fee-based accounts and passive investments; reduced competition among investment products and providers; less innovation; and a harmful exit of advisers from the marketplace. Similarly, commenters expressed concern about the costs imposed by the Rule and PTEs on the financial services industry, the likelihood that those costs would be passed on to plan and IRA investors, and the risk of extensive class action litigation. Commenters asserted that the costs of the Fiduciary Rule and PTEs would further increase if they become applicable but are subsequently revised or rescinded due to the examination required by the President. Additionally, commenters argued that the complexities, ambiguities, and uncertainties associated with the Fiduciary Rule and PTEs require additional time for implementation. A number of commenters also asserted that the rulemaking exceeded the Department's authority or would be better left to other regulators, such as the Securities and Exchange Commission or state insurance commissioners. To these commenters and petitioners, delay is necessary in order to review and address these claims.

Other commenters and petitioners expressed broad support for the Rule and PTEs and opposition to any delay in their implementation. Many of these commenters stressed the Department's determination in the final rulemaking that, under the current regulatory structure, investors lose billions of dollars each year as a result of conflicts of interest, and argued that delay would compound these losses. Commenters argued that the Department already has studied this topic, as well as the issues presented in the President's Memorandum, at great length as part of an extensive regulatory process, its original analysis was not flawed, and nothing has changed since then that would warrant a reexamination. Commenters noted that the rulemaking had been upheld by three federal district courts to date, and that two of those courts had concluded that the previous regulatory definition of fiduciary investment advice may be difficult to reconcile with the statutory text of ERISA's definition of fiduciary.

Opponents of a delay also argued that the Fiduciary Rule and PTEs have already contributed to positive changes in the marketplace, and that further delay could slow or reverse this progress. Commenters also challenged assertions that firms would be unable to comply with their obligations as of April 10, 2017, or that aspects of the Rule or PTEs were unworkable; noted that a number of firms have advertised that they already are prepared for full compliance with the Rule and PTEs; asserted that concerns about class actions were exaggerated and neglected the values served by such litigation; and argued that further delay would have the effect of penalizing firms that took regulatory deadlines seriously while rewarding those that failed to take appropriate actions to ensure compliance. Similarly, commenters opposing delay expressed support for the substance of the Fiduciary Rule and the PTEs, arguing that the Fiduciary Rule would protect retirement investors from abuse; appropriately strengthen the standards applicable to advisers; create a level playing field for all advisers by requiring adherence to a best interest standard regardless of title or product; align advisers' standards with investors' reasonable expectations that recommendations will be based on their best interests (also, thereby avoid investor confusion about the significance of different adviser designations); and ensure that investment recommendations and choices are based on the investor's interests rather than advisers' conflicts of interest. Finally, a commenter argued that the proposed delay is inconsistent with the Congressional Review Act, Executive Order 12866, Executive Order 13563 and Executive Order 13771, among other things.[6]

In response to the Department's request for comments as to whether it should delay only certain aspects of the Rule and PTEs, but not others, the commenters and petitioners had very different views.[7] A substantial number of commenters that generally believe no delay is warranted nevertheless stated that, if the Department were to proceed with a delay, the delay should only partially apply: the Fiduciary Rule and

[5] The 2016 Regulatory Impact Analysis can be accessed on EBSA's Web site at (*https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2/conflict-of-interest-ria.pdf*). Rather than repeat that analysis here, the Department refers readers to 81 FR 21002 (April 8, 2016) (BIC Exemption) and 81 FR 21089 (April 8, 2016) (Principal Transactions Exemption) for discussion of the issues raised by comments expressing support or opposition to the Rule and PTEs. The Department has requested additional comments on these and related issues in connection with its work on the President's Memorandum. As indicated in the preamble to the March 2, 2017 NPRM, the Department seeks comments on the issues raised by the President's Memorandum and related questions by April 17, 2017, as detailed at 82 FR 12319, 12324–25. The Department urges commenters to submit data, information, and analyses responsive to the requests in that document by that date, so that it can complete its work pursuant to the Memorandum as carefully, thoughtfully, and expeditiously as possible.

[6] Some commenters said the 15-day comment period on whether to delay was too short to provide a meaningful opportunity for input, noting that Executive Order 12866 recommends 60 days or more. They also said the 45-day period for input on reconsideration of the Rule and PTEs was insufficient to address more complex issues surrounding the likely impact of the Rule and PTEs. The 15-day comment period was chosen in light of the public reaction and media reports following the Presidential Memorandum expressing concerns about investor confusion and other marketplace disruption based on uncertainty about whether a delay could be accomplished before April 10. The Department concluded that prompt action was needed to protect against this investor confusion and uncertainty, and to ensure that the Rule and PTEs did not become temporarily applicable. In addition, the primary question to address in this 15-day period was whether or not to delay, an issue less complex than those reserved for the 45-day comment period. In any event, in this 15-day period the Department received approximately 193,000 comment and petition letters expressing a wide range of views on whether the Department should grant a delay and the duration of any delay. That level of public engagement itself belies the contention that the public did not have a meaningful opportunity to comment on the proposal. The Department likewise disagrees with the assertions regarding the 45-day comment period. In light of the need for prompt action to avoid continued uncertainty regarding the future of the Rule and PTEs, the Department concluded that a 45-day comment period would provide adequate time for the public to provide input, generally, and on the threshold questions raised in the Presidential Memorandum. Importantly, although a high volume of commentary continues to date, the Department always has the ability to re-open the comment period or otherwise solicit information to supplement the public comment, if necessary.

[7] *See* 82 FR 12319, 12321 (Mar. 2, 2017).

Impartial Conduct Standards of the PTEs should be immediately applicable even if other conditions and obligations are postponed. These commenters generally noted that many of the nation's largest financial institutions publicly state their current adherence to and support for a best interest standard, and stated the merits of this approach should be beyond dispute. Other commenters, however, caution the Department against permitting any part of the Rule or PTEs to become applicable before completion of the examination required by the President's Memorandum. These commenters essentially maintain that all issues identified by the Presidential Memorandum must be resolved before any aspect of the Rule or PTEs become applicable to avoid the possibility of investor confusion and needless or excessive expense as firms build systems and compliance structures that may ultimately be unnecessary or mismatched with the Department's final decisions on the issues raised by the Presidential Memorandum.

Based on its review and evaluation of the public comments, the Department has concluded that some delay in full implementation of the Fiduciary Rule and PTEs is necessary to conduct a careful and thoughtful process pursuant to the Presidential Memorandum, and that any such review is likely to take more time to complete than a 60-day extension would afford, as many commenters suggested. The Department is also concerned that many firms may have reasonably assumed that the Department is likely to delay implementation as proposed and may, accordingly, have slowed their compliance efforts. As a result, rigid adherence to the April 10 applicability date could result in an unduly chaotic transition to the new standards as firms rush to prepare required disclosure documents and finalize compliance structures that are not yet ready, resulting in investor confusion, excessive costs, and needlessly restricted or reduced advisory services.

At the same time, however, the Department has concluded that it would be inappropriate to broadly delay application of the fiduciary definition and Impartial Conduct Standards for an extended period in disregard of its previous findings of ongoing injury to retirement investors. The Fiduciary Rule and PTEs followed an extensive public rulemaking process in which the Department evaluated a large body of academic and empirical work on conflicts of interest, and determined that conflicted advice was causing harm to retirement investors.[8] For all the reasons detailed in the preambles for the Fiduciary Rule and PTEs and in the associated Regulatory Impact Analysis, the Department concluded that much of this harm could be avoided through the imposition of fiduciary status and adherence to basic fiduciary norms, particularly including the Impartial Conduct Standards.

The Department concludes that it can best protect the interests of retirement investors in receiving sound advice, provide greater certainty to the public and regulated parties, and minimize the risk of unnecessary disruption by taking a more balanced approach than simply granting a flat delay of fiduciary status and all associated obligations for a protracted period. Specifically, the Department extends the applicability date for the Fiduciary Rule and the BIC Exemption and Principal Transactions Exemption (including their transition relief) for 60 days, as proposed. The applicability date of the Impartial Conduct Standards in these exemptions is extended for the same 60 days, while 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, is not required until January 1, 2018, by which time the Department intends to complete the examination and analysis directed by the Presidential Memorandum. In this way, the Fiduciary Rule (*i.e.,* the new fiduciary definition itself) will become applicable after the 60-day delay, and the BIC Exemption and the Principal Transactions Exemption will be available as of that date but these exemptions will only require fiduciaries to adhere to the Impartial Conduct Standards for covered transactions until January 1, 2018, when the remaining conditions will apply unless revised or withdrawn. The other requirements of these PTEs, including representations of fiduciary compliance, contracts, warranties about firm's policies and procedures, etc., will not become applicable during the period in which the Department performs the mandated examination of the Rule and PTEs. In addition, the Department has delayed the applicability of the amendments to PTE 84–24 until January 1, 2018, except that the Impartial Conduct Standards will become applicable on June 9, 2017, and the Department has extended for 60 days the applicability dates of the 2016 amendments to other previously granted exemptions.

This approach has a number of significant advantages:

- Since there is fairly widespread, although not universal, agreement about the basic Impartial Conduct Standards, which require advisers to make recommendations that are in the customer's best interest (*i.e.,* advice that is prudent and loyal), avoid misleading statements, and charge no more than reasonable compensation for services (which is already an obligation under ERISA and the Code, irrespective of this rulemaking), this approach provides retirement investors with the protection of basic fiduciary norms and standards of fair dealing, while at the same time honoring the President's directive to take a hard look at any potential undue burdens.[9] After the passage of a year since the Rule and PTEs were published, and based on public comment, the Department finds little basis for concluding that advisers need more time to give advice that is in the retirement investor's best interest and free from misrepresentations in exchange for reasonable compensation. Indeed, financial institutions and advisers routinely hold themselves out as providing just such advice.
- Because the provisions requiring written representations and commitments about fiduciary compliance, execution of a contract, warranties about policies and procedures, and the prohibition on imposing arbitration requirements on class claims, would not go into effect during this period, this approach eliminates or minimizes the risk of litigation, including class-action litigation, in the IRA marketplace, one of the chief concerns expressed by the financial services industry in connection with the Fiduciary Rule and PTEs.
- This approach is consistent with the Department's compliance-first

[8] For example, the Department estimated that advisers' conflicts on average cost their IRA customers who invest in front-end-load mutual funds between 0.5 percent and 1.0 percent annually in foregone risk-adjusted returns, due to poor fund selection.

[9] Advice is in the retirement investor's best interest when the advice is rendered ''with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, without regard to the financial or other interests of the Adviser, Financial Institution, or any Affiliate, Related Entity, or other party.'' *See* Section VIII(d) of the BIC Exemption As set forth in the preamble to the BIC Exemption, 81 FR at 21028 (April 8, 2016), this definition ''incorporates the objective standards of care and undivided loyalty that have been applied under ERISA for more than forty years.''

posture toward implementation as reflected in EBSA Field Assistance Bulletin 2017–01 (March 10, 2017) (announcing a temporary non-enforcement safe harbor for DOL litigation for advisers and financial institutions) [10] and its Conflict of Interest FAQs (Part I—Exemptions) (Oct. 27, 2016) (''The Department's 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 new rule and exemptions.'').[11] Although ERISA provides a cause of action for violations by fiduciary advisers to ERISA-covered plans and plan participants, including violations with respect to rollovers and distributions of plan assets, the Department's focus will be on compliance assistance, both in the period before January 1, 2018, and for some time after.

- This approach addresses financial services industry concerns about uncertainty over whether they need to immediately comply with all of the requirements of the PTEs, particularly including the notice and disclosure provisions that would otherwise have become applicable on April 10, 2017, without giving short shrift to the competing interest of retirement investors in receiving advice that adheres to basic fiduciary norms. Because the Impartial Conduct Standards apply after 60 days, retirement investors will benefit from higher advice standards, while the Department takes the additional time necessary to perform the examination required by the President's Memorandum.

- If, after receiving comments on the issues raised by the President's Memorandum, the Department concludes that significant changes are necessary or that it needs more time to complete its review, it retains the ability to further extend the January 1, 2018 applicability dates or to grant additional interim relief, such as more streamlined PTEs, as it finalizes its review and decides whether to make more general changes to the Rule or PTEs.

In the Department's view, this approach gives the Department an appropriate amount of time to reconsider the regulatory burdens and costs of the Fiduciary Rule and PTEs, calls for advisers and financial institutions to comply with basic standards for fair conduct during that time, and does not foreclose the Department from considering and making changes with respect to the Rule and PTEs based on new evidence or analyses developed pursuant to the President's Memorandum.

Accordingly, based on its review of the comments, the Department has decided to extend for 60 days the applicability date of all provisions of the Fiduciary Rule. In addition, the applicability dates of the BIC Exemption and the Principal Transactions Exemption are extended for 60 days, and these exemptions require fiduciaries engaging in transactions covered by the exemptions to comply only with the Impartial Conduct Standards, during the transition period from June 9, 2017 through January 1, 2018. This document further delays the applicability of the amendments to PTE 84–24 until January 1, 2018, except that the Impartial Conduct Standards will become applicable on June 9, 2017, and extends for 60 days the applicability dates of amendments to other previously granted exemptions. The Impartial Conduct Standards generally require that advisers and financial institutions provide investment advice that is in the investors' best interest, receive no more than reasonable compensation, and avoid misleading statements to investors about recommended transactions. As detailed in the Regulatory Impact Analysis below, a longer delay of the Rule and Impartial Conduct Standards cannot be justified based on the public record to date. In the absence of the Impartial Conduct Standards, retirement investors are likely to continue incurring new losses from advisory conflicts. Losses arising from a delay of longer than 60 days would quickly overshadow any additional compliance cost savings.

The predicted cost savings and investor losses associated with this extension may increase or decrease depending on the information and data received in response to the comment solicitation contained in the March 2017 NPRM. Between now and April 17, 2017, the Department will continue to receive and review these additional public comments, and between now and January 1, 2018, the Department will perform the examination required by the President. Following the completion of the examination, some or all of the Rule and PTEs may be revised or rescinded, including the provisions scheduled to become applicable on June 9, 2017. This document's delay of the applicability dates as described above should not be viewed as prejudging the outcome of the examination.

The approach adopted in this document seeks to address the major concerns of the commenters and petitioners in an equitable and cost efficient manner. There was no consensus among commenters and petitioners regarding whether, and how long, to delay the applicability date of the Rule and PTEs, or even whether to retain or rescind the Rule and PTEs in whole or in part. Applying the Rule and the Impartial Conduct Standards after a 60-day delay, however, means that much of the potential investor gains predicted in the Rule's regulatory impact analysis published on April 8, 2016, will commence on June 9, 2017, and accrue prospectively while the Department performs the examination mandated by the President and considers potential changes to the Rule and PTEs.

As compared to the contract, disclosure, and warranty requirements of the BIC Exemption and Principal Transactions Exemption, the Fiduciary Rule and the Impartial Conduct Standards are among the least controversial aspects of the rulemaking project (although not free from controversy or unchallenged in litigation). Indeed, even among many of the commenters and petitioners that support a delay of the applicability date, there are varying degrees of support for the Rule and the Impartial Conduct Standards. In the Department's judgment, Plan and IRA investors, firms, and advisers all will benefit from the balanced approach set forth above. Firms and advisers will be given additional time for an orderly transition and will not be required to immediately provide the notices, disclosures, and written commitments of fiduciary compliance that would otherwise be immediately required under the BIC Exemption and Principal Transactions Exemption. Also, more controversial provisions—such as requirements to execute enforceable written contracts under the Best Interest Contract and Principal Transactions Exemption, and changes to PTE 84–24 (other than the addition of the Impartial Conduct Standards)—are not applicable until January 1, 2018, while the Department is honoring the President's directive to take a hard look at any potential undue burdens and decides whether to make significant revisions. As indicated above, if, after receiving comments on

[10] *See also* IRS Announcement 2017–04 (March 27, 2017), I.R.B. 2017–16 (April 17, 2017), which provides relief from certain excise taxes under Code section 4975 and any related reporting requirements to conform to the Department's position in EBSA Field Assistance Bulletin 2017–01.

[11] Available at ***https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/coi-rules-and-exemptions-part-1.pdf***

the issues raised by the President's Memorandum, the Department concludes that significant changes are necessary or that it needs more time to complete its review, it retains the ability to further extend the January 1, 2018 applicability dates or to grant additional interim relief, such as more streamlined PTEs, as it finalizes its review and decides whether to make more general changes to the Rule or PTEs.

C. Regulatory Impact Analysis

On March 2, 2017, the Department published the NPRM seeking comment on a proposed 60-day delay of the applicability date of the Fiduciary Rule and PTEs until June 9, 2017.[12] The comment period for the proposed extension closed on March 17, 2017. After careful review and consideration of the comments, the Department is issuing this final rule that will (1) extend the applicability date of the Fiduciary Rule, the BIC Exemption, and the Principal Transactions Exemption for 60 days until June 9, 2017, and (2) require that fiduciaries relying on these exemptions for covered transactions adhere only to the ''best interest'' standard and the other Impartial Conduct Standards of these PTEs during a transition period from June 9, 2017, through January 1, 2018. As a result, the Fiduciary Rule and the Impartial Conduct Standards in these PTEs will become applicable beginning on June 9, 2017, while other conditions in these PTEs, such as requirements to make specific written disclosures and representations of fiduciary compliance in investor communications, are not required until January 1, 2018. In addition, the Department also delays the applicability of amendments to PTE 84–24 until January 1, 2018, except that the Impartial Conduct Standards will become applicable on June 9, 2017, and extends the applicability dates of the amendments to other previously granted PTEs for 60 days until June 9, 2017.

As fully discussed above in Section B, the Department received many comments supporting and opposing the applicability date delay. In general, commenters opposing the delay expressed concern regarding the harm investors would suffer if their advisers continue providing conflicted advice to them while the applicability date for the Fiduciary Rule and PTEs is delayed. On the other hand, commenters supporting the proposed 60-day delay or a longer or indefinite delay argued that such delay would be appropriate, because it would provide sufficient time for the Department to complete its review of the Rule and PTEs in conformance with the President's Memorandum without issuing a series of extensions that could create market frictions due to uncertainty regarding whether the Department would ultimately leave the Rule in place, revise it, or rescind it.

The Department's decision to delay the applicability date of the Fiduciary Rule for 60 days and make the Impartial Conduct Standards in the new PTEs and amendments to previously granted PTEs applicable on June 9, 2017, is expected to produce benefits that justify associated costs. On the benefits side, the 60-day delay of the April 10 applicability date will avert the possibility of a costly and disorderly transition to the Impartial Conduct Standards on April 10. In the face of uncertainty and widespread questions about the Fiduciary Rule's future or possible repeal, many financial firms slowed or halted their efforts to prepare for full compliance on April 10. Consequently, failure to delay that applicability date could jeopardize such firms' near-term ability and/or propensity to serve classes of customers, and both such firms and their investor customers could suffer. Investors whose cost to select and change to a different firm are high would be more adversely affected by such disruption. Also on the benefits side, both the 60-day delay and the subsequent transition period will generate cost savings for firms. Today's final rule will produce more cost savings for firms than a 60-day delay of the PTEs' applicability date would alone, because many exemption conditions would not have to be met until January 1, 2018. The Department notes, however, that the benefits of avoiding disruption and compliance cost savings generally will be proportionately larger for those firms that currently are less prepared to comply with the Fiduciary Rule and PTEs.

On the cost side, the NPRM RIA predicted that a 60-day delay alone would inflict some losses on investors, because advisory conflicts would continue to affect some advice rendered during those 60 days. However, the Department now believes that investor losses from the 60-day extension provided here will be relatively small. Because many firms have already taken steps toward honoring fiduciary standards, some investor gains from the Fiduciary Rule are already being realized and are likely to continue. On the other hand, because many other firms are not immediately prepared to satisfy new requirements beginning April 10, and need additional time to comply, the 60-day delay is unlikely to deprive investors of additional gains.[13]

Finally, because the Impartial Conduct Standards will become applicable on June 9, 2017, the Department believes that firms will make efforts to adhere to those standards, motivated both by their applicability and by the prospect of their likely continuation, as well as by the impending applicability of complementary consumer protections and/or enforcement mechanisms beginning on January 1, 2018, depending on the results of the Department's review of the Fiduciary Rule pursuant to the President's Memorandum. Because of Firms' anticipated efforts to satisfy the Impartial Conduct Standards during that review, the Department believes that most, but not all, of the investor gains predicted in the 2016 RIA for the transition period will remain intact. The fraction of these gains that will be lost during the transition period (and future returns not realized because of those losses), however, will represent a cost of this final rule.

Several recent media articles reported that industry and market observers anticipate multiple extensions because they believe 60 days would not be sufficient for the Department to conclude its re-examination.[14] Several commenters were also skeptical that the Department can complete its thorough re-evaluation within the 60 day period as proposed. Thus, those commenters supported much longer-term extensions such as a one-year or indefinite extension. Under this final rule extending the applicability dates, stakeholders can plan on and prepare for compliance with the Fiduciary Rule and the PTEs' Impartial Conduct Standards beginning June 9, 2017. At the same time, stakeholders will be assured that they will not be subject to the other exemption conditions in the BIC Exemption and the Principal Transactions Exemption until at least January 1, 2018. The Department will aim to complete its review pursuant to

[12] The Department would also treat Interpretative Bulletin 96–1 as continuing to apply during the 60-day extension of the applicability date of the Rule.

[13] Comments on the NPRM and various media reports together suggest that there is substantial variation in different firms' preparedness to comply with various provisions of the Fiduciary Rule and PTEs. Differences in firms' preparedness may reflect differences in the level of effort required to achieve compliance, differences in the availability of resources to undertake such efforts, differences in expectations about whether, how and when the Fiduciary Rule and PTEs might be revised, differences in perceptions of and appetite for compliance and/or market risk, or some combination of these factors.

[14] Mark Schoeff Jr. Investment News, March 1, 2017, ''Delay of DOL Fiduciary Rule likely to extend beyond 60 days.''

the President's Memorandum as soon as possible before that date and announce its intention on whether to propose changes to the Rule or PTEs, provide additional transitional relief, or to allow all the conditions of the PTEs to become applicable as scheduled on January 1, 2018.

The Department has concluded that the benefits of this final rule, which include the estimated cost savings, the potential reduction in transition costs, the reduction of uncertainties, and the avoidance of major and costly market disruptions, justify its costs.

1. Executive Order 12866 Statement

This final rule is an economically significant regulatory 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, and it has been reviewed by the Office of Management and Budget (OMB).

a. Investor Gains

Some commenters suggested that the Department underestimated the harms to investors from NPRM's proposed delay, because the illustrative losses of investor gains did not include all types of conflicts nor all types of investment in addition to excluding the harms associated with rollover recommendations and small plans. One commenter offered its own estimates of investor losses, significantly larger than the Department's, due to this delay. Other commenters argued that the Department's estimated investor losses from the proposed 60-day delay were overstated because they were derived from the 2016 RIA, which these commenters contend overestimated net investor gains.

The Department's regulatory impact analysis of the Fiduciary Rule and related PTEs (2016 RIA) predicted that resultant gains for retirement investors would justify the compliance costs. The analysis estimated a portion of the potential gains for IRA investors at between $33 billion and $36 billion over the first 10 years for one segment of the market and category of conflicts of interest. It predicted, but did not quantify, additional gains for both IRA and ERISA plan investors.

In considering the benefits and costs of this final rule, the Department considered both the effects of the 60-day delay (until June 9) in the applicability of the Fiduciary Rule and PTEs and Impartial Conduct Standards conditions, and the longer delay (until January 1, 2018) in the applicability of the other exemption conditions in the BIC Exemption and the Principal Transactions Exemption.

The NPRM's RIA illustrated a possible effect of a 60-day delay in the commencement of the potential investor gains estimated in the 2016 RIA. The illustration indicated that such a delay could result in a reduction in those estimated gains of $147 million in the first year and $890 million over 10 years using a three percent discount rate.[15] The illustration used the same methodology that the 2016 RIA used to estimate potential investor gains from the Rule. Both made use of empirical evidence that front-end-load mutual funds that share more of the load with distributing brokers attract more flows but perform worse.[16]

To the extent that investment advisers comply with the Fiduciary Rule and PTEs only when the Fiduciary Rule and PTEs are applicable on their original terms and schedule, this estimate represents a reasonable adjustment of the 2016 estimate to reflect the impact of the 60-day delay. On the other hand, if some advisers would comply with or without a delay or would fail to comply with or without a delay, then the estimate overstates the delay's impact. Public comments that have implications for these possibilities will be discussed below.

A number of comments on the NPRM indicate that some firms are not prepared to comply with the Fiduciary Rule beginning on April 10, 2017. Based on these comments, it appears that, even before the President issued his Memorandum, at least some firms were not on course to achieve full compliance with the Impartial Conduct Standards by that date. In addition, over the nearly sixty days since the President's Memorandum, many firms have assumed that the Department is likely to grant a delay or even repeal the rulemaking, and stepped back their compliance efforts accordingly. As a result, the Department is concerned that a significant portion of the industry is not in a position to issue millions of notices, finalize and fully stand-up transition compliance structures, and perform all the other work necessary to comply with their obligations under the transition provisions of the BIC Exemption and Principal Transaction Exemption by the April 10, 2017 deadline.

As a result, notwithstanding the Department's efforts to issue transitional enforcement relief, absent an additional sixty days' extension, there is a significant risk of a confused and disorderly transition process, rushed business decisions, excessive expenses because of deadlines that are now too tight, and poor or inaccurate communications to consumers. This could also lead to reduced services and increased costs for consumers in the short term. While the Department cannot readily quantify the impact of these considerations, there is substantial reason to believe that they could substantially offset the benefits portion of the investor gains originally posited by (but not quantified in) the 2016 RIA in the sixty days immediately following the original applicability date. The calculated investor gains above were based on the assumption that firms would be in a position to comply with their transitional obligations by April 10, 2017. As noted previously, to the extent that assumption is incorrect, the calculations overstate the likely injury caused by delay.

The 60-day extension permits an orderly transition to the Impartial Conduct Standards to once again occur, so that investors can gain from firms' adherence to these basic standards. Additionally, the approach taken by this document gives the Department the time necessary to implement the President's Memorandum, while avoiding the risk that firms will engage in costly compliance activities to meet requirements that the Department may ultimately decide to revise. It has been close to a year since the Department finalized the Fiduciary Rule and PTEs, and now with the additional extension of the applicability date contained in this final rule, there is little basis for concluding that advisers need still more time before they will be ready to give advice that is in the best interest of retirement investors and free from material misrepresentations in exchange for reasonable compensation. In addition, some comments indicate that some firms have already adopted and intend to maintain fiduciary standards

[15] The ten-year estimate using a seven percent discount rate was $610 million. The equivalent annualized estimates were $104 million using a three percent discount rate and $87 million using a seven percent discount rate.

[16] Other characteristics that are shared due to the common methodology include: (1) The estimates encompass both transfers and changes in society's real resources (the latter being benefits in the context of the 2016 RIA but costs in this RIA because gains are forgone); (2) the estimates have a tendency toward overestimation in that they reflect an assumption that the April 2016 Fiduciary Rule will eliminate (rather than just reduce) underperformance associated with the practice of incentivizing broker recommendations through variable front-end-load sharing; and (3) the estimates have a tendency toward underestimation in that they represented only one negative effect (poor mutual fund selection) of one source of conflict (load sharing), in one market segment (IRA investments in front-load mutual funds).

of conduct. For this reason too, investor losses from the 60-day delay are likely to be smaller than would otherwise be the case.

At the same time, the Department notes that the NPRM RIA's illustration of potential investor losses was incomplete because it represented only one negative effect of one source of conflict in one market segment. Accordingly, some commenters suggested that the Department underestimated the harms to investors from NPRM's proposed delay, because the illustrative losses of investor gains did not include all types of conflicts nor all types of investment in addition to excluding the harms associated with rollover recommendations and small plans.[17] One commenter offered its own estimates of investor losses, significantly larger than the Department's, due to this delay. For example, the comment letter submitted by Economic Policy Institute (EPI) estimates that retirement savers who received conflicted advice during the 60-day delay would receive $3.7 billion less when their savings are drawn down over 30 years compared to those savers that did not receive conflicted advice. EPI derived its estimate using the methodology the White House Council of Economic Advisors (CEA) used in its 2015 report, which estimated that the aggregate annual cost of conflicted advice is about $17 billion each year).[18] The Department notes that the EPI estimate covers broad range of investments including variable annuities and other types of mutual funds, while the Department's estimates in the 2016 final RIA are based solely on front-end load mutual funds.

Other commenters argued that the Department's estimated investor losses from the proposed 60-day delay were overstated because they were derived from the 2016 RIA, which these commenters contend overestimated net investor gains. These commenters generally contend the 2016 RIA wrongly applied published research to estimate investor gains and/or failed to properly account for social costs such as potential loss of access to financial advice.[19] These comments largely echo comments made in response to the Fiduciary Rule when it was proposed in 2015, and that were addressed in considerable detail in the 2016 RIA. In the 2016 RIA, the Department concluded that published research supports its estimates of investor gains and that the Fiduciary Rule and PTEs were not likely to impose additional social costs as a result of the loss of access to financial advice.[20] The Department notes that its conclusion that investor losses from this delay will be small has no immediate bearing on the conclusions of its 2016 RIA. However, the Department will review the 2016 RIA's conclusions as part of its review of the Fiduciary Rule and PTEs directed by the Presidential Memorandum.

With respect to this final rule's delay in the applicability of exemption conditions other than the Impartial Conduct Standards in the BIC Exemption and the Principal Transactions Exemption until January 1, 2018, the Department considered whether investor losses might result. Under this final rule, beginning on June 9, 2017, advisers will be subject to the prohibited transaction rules and will generally be required to (1) make recommendations that are in their client's best interest (*i.e.,* IRA recommendations that are prudent and loyal), (2) avoid misleading statements, and (3) charge no more than reasonable compensation for their services. If advisers fully adhere to these requirements, affected investors will generally receive the full gains due to the fiduciary rulemaking. However, the temporary absence (until January 1, 2018) of exemption conditions intended to support and provide accountability mechanisms for such adherence (*e.g.,* conditions requiring advisers to provide a written acknowledgement of their fiduciary status and adherence to the Impartial Conduct Standards) obliges the Department to consider the possibility that some lapses in compliance may result in associated investor losses.

Advisers who presently are fiduciaries may be especially likely to fully satisfy the PTEs' Impartial Conduct Standards before January 1, 2018, in the ERISA-plan context, because advisers who make recommendations to plans and plan participants regarding plan assets, including recommendations on rollovers or distributions of plan assets, are already subject to standards of prudence and loyalty under ERISA and a violation of the Impartial Conduct Standards would be subject to claims for civil liability under ERISA. Moreover, financial institutions and advisers who do not provide impartial advice as required by the Rule and PTEs would violate the prohibited transaction rules of the Code.

In addition, the temporary absence of the transitional disclosure conditions in the BIC Exemption and Principal Transactions Exemption is likely to have a smaller impact than would be true if the Impartial Conduct Standards were removed. Advisers would be expected to exercise care to fairly and accurately describe recommended transactions and compensation practices pursuant to the Impartial Conduct Standards which require advisers to make recommendations that are prudent and loyal (*i.e.,* in the customer's best interest), free from misrepresentations, and consistent with the reasonable compensation standard.[21] In addition, even though advisers would not be specifically required by the terms of these PTEs to notify retirement investors of the Impartial Conduct Standards and to acknowledge their fiduciary status before January 1, 2018, many investors are likely to know they are entitled to advice that adheres to a fiduciary standard because this final rule will receive publicity from the Department and media, and many advisers will likely notify consumers voluntarily about the imposition of the standard and their adherence to that standard as a best practice.

Comments received by the Department and media reports also indicate that many financial institutions already had completed or largely completed work to establish policies and procedures necessary to make the business structure and practice shifts required by the Impartial Conduct Standards earlier this year (*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 conflict-free product offerings), and the Department believes that financial institutions may use this compliance infrastructure to ensure that they meet the Impartial Conduct Standards after taking the additional

[17] For example, the comment letter submitted by Consumer Federation of America on March 17, 2017 argued that regulatory impact analysis for the Fiduciary Rule is inadequate.

[18] The CEA report was most recently accessed at the following URL: *https://permanent.access.gpo.gov/gpo55500/cea_coi_report_final.pdf.*

[19] For example, see the ICI comment letter and the IRI comment letter.

[20] The 2016 RIA is available at *https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/Rules-and-regulations/completed-Rulemaking/1210-AB32-2/conflict-of-interest-ria.pdf.* See pp. 312–324.

[21] In addition to various disclosure and representation obligations, other delayed conditions in the BIC Exemption and Principal Transactions Exemption include requirements to designate persons responsible for addressing material conflicts of interest and monitoring compliance and to comply with recordkeeping obligations.

sixty days for an orderly transition between June 9, 2017, and January 1, 2018.

For these reasons, the Department expects that advisers' compliance with the Impartial Conduct Standards during the period between June 9, 2017 and January 1, 2018, will be substantial, even if there is some reduction in compliance relative to the baseline. The Department is uncertain about the magnitude of this reduction and will consider this question as part of its review of the Fiduciary Rule and PTEs pursuant to the President's Memorandum.

b. Cost Savings

In the 2016 RIA, the Department estimated that Financial Institutions would incur $16 billion in compliance costs over the first 10 years, $5 billion of which are first-year costs. Delaying the applicability date of the Rule and PTEs would result in cost savings due to foregone costs of complying for 60 days with the new PTE conditions. Additionally, after June 9, 2017 until at least January 1, 2018, financial institutions and advisers relying on the BIC Exemption and Principal Transactions Exemption to engage in covered transactions would have to satisfy only the Impartial Conduct Standards of those exemptions. They would not be specifically required to meet other transition period requirements of these PTEs, such as to make specific written disclosures and representations of fiduciary status and of compliance with fiduciary standards in investor communications, designate a person or persons responsible for addressing material conflicts of interest and monitoring advisers' adherence to the Impartial Conduct Standards, and comply with new recordkeeping obligations.

Therefore, due to both the 60-day delay of the Fiduciary Rule and PTEs and the reduced transition period requirements, the Department estimates cost savings of $78 million until January 1, 2018. The Department estimates that the ten-year cost savings, which also include returns on the cost savings that occur in the April 10, 2017, to January 1, 2018 time period, are $123 million using a three percent discount rate, and $114 million using a seven percent discount rate. The equivalent annualized values are $14.4 million using a three percent discount rate and $16.2 million using a seven percent discount rate.[22]

Figure 1 shows the sources of the cost-savings. Please note that numbers in the table do not equal the ten-year total costs-saving, because they are not discounted. The cost savings to firms due to the delay remain unchanged relative to what was estimated for the NPRM, while the cost-savings from the complete elimination of the transition notice has increased. Also note that even though the applicability date of the exemption conditions have been delayed during the transition period, it is nevertheless anticipated that firms that are fiduciaries will implement procedures to ensure that they are meeting their fiduciary obligations, such as changing their compensation structures and monitoring the sales practices of their advisers to ensure that conflicts in interest do not cause violations of the Impartial Conduct Standards, and maintaining sufficient records to corroborate that they are adhering to Impartial Conduct Standards. However, these firms have considerably more flexibility to choose precisely how they will comply during the transition period. Therefore, there could be additional cost savings not included in these estimates if, for example, firms develop more efficient methods to adhere to the Impartial Conduct Standards. The Department does not have sufficient data to estimate these cost savings, therefore, they are not quantified.

[22] Estimates are derived from the ''Data Collection,'' ''Record Keeping (Data Retention),'' and ''Supervisory, Compliance, and Legal Oversight'' categories discussed in section 5.3.1 of the 2016 final RIA and reductions in the number of the transition notices that will be delivered.

Figure. 1 Cost-Savings Due to 60 Day Delay and Then Only Impartial Conduct Standards Until January 1 ($ in thousands and undiscounted)				
BD	**Large**	**Medium**	**Small**	**Total**
Data Collection	$423	$372	$2,572	$3,366
Record Keeping (Data Retention)	$706	$1,116	$4,297	$6,119
Supervisory, Compliance, and Legal Oversight	$339	$462	$2,061	$2,861
Total				$12,347
RIA Firms Using BICE				
Data Collection	$221	$997	$3,492	$4,710
Record Keeping (Data Retention)	$370	$2,991	$5,835	$9,196
Supervisory, Compliance, and Legal Oversight	$89	$619	$1,399	$2,107
Total				$16,012
Insurance Firms				
Data Collection	$221	$443	$223	$887
Record Keeping (Data Retention)	$370	$1,328	$372	$2,071
Supervisory, Compliance, and Legal Oversight	$177	$550	$179	$906
Total				$3,863
Savings from Notice Requirements				$45,746
Grand Total				$77,968

The delay of applicability dates described in this final rule could defer or reduce start-up compliance costs, particularly in circumstances where more gradual steps toward preparing for compliance are less expensive. However, due to lack of systematic evidence on the portion of compliance activities that have already been undertaken, thus rendering the associated costs sunk, the Department is unable to quantify the potential change in start-up costs that would result from a delay in the applicability date and elimination of the transition disclosure requirement.

Commenters addressed the issue of start-up costs that have not yet been incurred suggesting that a delay could yield substantial savings, particularly if subsequent changes to the Fiduciary Rule and PTEs or subsequent market developments make it possible to avoid or reduce such costs. One commenter provided as an example of start-up costs that might be avoided the cost of developing ''T'' shares—a cost that has not yet been incurred by some affected firms. T shares, a class of mutual fund shares, generally would pay advisers a uniform commission, thereby mitigating advisory conflicts otherwise associated with variation in commission levels across different mutual funds. Some investment companies had been rushing to develop T shares in order to comply with the Fiduciary Rule and PTEs' originally scheduled applicability dates. However, some investment companies are now pursuing an alternative approach, sometimes referred to as ''clean'' shares, as a potentially better solution. Clean shares would have no commission attached. Instead, distributing brokers would set their own commission levels, and generally would set the levels uniformly across different funds they recommend, thereby mitigating potential conflicts from variation in commission levels. The clean share approach recently became more viable, owing to new SEC staff guidance clarifying its permissibility under applicable law. It now seems likely that the T-share approach will yield to clean shares. Consequently, this final rule's delay in the applicability of the Fiduciary Rule and PTEs might make it possible to avoid some of the cost of continuing to develop and implement T-shares, in favor of moving more directly to what might be the preferred long-term solution, namely, clean shares.

More generally, however, it is unclear what proportion of start-up costs might be avoided as a result of this final rule's delay of applicability dates. Absent additional changes to the Fiduciary Rule or PTEs, firms are likely to incur most of these costs eventually. The Department generally believes that start-up costs not yet incurred for requirements scheduled to become applicable January 1, 2018, should not be included as a cost savings associated with this final rule, because it remains to be determined whether those requirements will be revised or eliminated.

Some comments generally argued that the compliance cost estimates presented in the 2016 RIA were understated, and that therefore the cost savings from a delay in the applicability of all or some of the requirements of the Fiduciary Rule and PTEs would be larger than estimated above.

Some comments reported expected costs savings if the Fiduciary Rule is rescinded or modified; however, that information is not useful for calculating the cost savings associated with this final rule, because the appropriate base-line for this analysis assumes full implementation of the Fiduciary Rule and PTEs by January 1, 2018. Those start-up costs that have not been incurred only would have an impact if the Department decides in the future to delay the January 1, 2018 implementation date or to revise or repeal the obligations of firms and advisers. The Department does not have any basis for predicting such changes at this time, before it has received substantial new data or evidence in response to the President's Memorandum.

A commenter also asserted that the Department significantly understated the cost savings that would result from a 60-day delay. This assertion had three components: (1) The commenter estimated the cost over 60 days to be $250 million based on the on-going cost from the final 2016 RIA of $1.5 billion per year, (2) that cost savings over a 10-year period were not provided to allow comparison to the negative effects on investors that would occur over the ten year period, (3) that industry cost savings were not projected out over 10 years using returns on capital in a similar manner to investors' lost earnings. The Department stands behind its estimate, however, because the commenter misapplied the estimates from the 2016 final RIA when developing its cost-saving estimate. The $1.5 billion on-going costs are the costs of compliance for all components of the Fiduciary Rule and PTEs; however, the delay affects only the costs related to the transition period requirements which are a subset of the costs included in the $1.5 billion estimate. Also, when estimating the costs for the Fiduciary Rule and PTEs a decision was made, for simplification of estimation, to over-estimate costs for the transition period by using the same costs for the transition period as was used for the period with full compliance during that time period.

The comment's assertions in items (2) and (3) above also are incorrect. Instead of a ten-year total cost number, an annualized number for the ten-year period was provided in the NPRM for both the cost savings ($8 million using a three percent discount rate and $9 million using a seven percent discount rate) and for the negative investor impacts ($104 million using a three percent discount rate and $87 million using a seven percent discount rate). Annualized numbers use the same inputs as those used to estimate a ten-year discounted total number, thereby allowing a comparison of expected impacts across the ten-year period. Also, the cost savings to firms from the delay were projected out for ten years and included in the annualized numbers to account for the fact that due to the delayed applicability date, financial institutions will have additional resources to reinvest in their firms. This parallels the methodology the Department used to estimate the ten-year reduction in investor gains that will result from the delay. Contrary to the concerns expressed by another commenter, the reported annualized number does not mean that costs are spread equally across the ten years.

Another commenter agreed that a delay ''could delay or reduce start-up compliance costs, particularly in circumstances where more gradual steps towards preparing for compliance are less expensive.'' However, the commenter failed to provide any estimates or data that would help the Department quantify such cost savings.

c. Alternatives Considered

In conformance with Executive Order 12866, the Department considered several alternatives in finalizing this final rule that were informed by public comments. As discussed below, the Department believes the approach adopted in this final rule likely yields the most desirable outcomes including avoidance of costly market disruptions, more compliance cost savings than other alternatives, and reduced investor losses. In weighing different options, the Department took numerous factors into account. The Department's objective was to avoid unnecessary confusion and uncertainty in the investment advice market, facilitate continued marketplace innovation, and minimize investor losses while maximizing compliance cost savings.

Compared with the alternative offered in the NPRM, this final rule provides more benefits. It provides more certainty during the period between June 9, 2017 and January 1, 2018. The Department will aim to complete its review of the Fiduciary Rule and PTEs pursuant to the President's Memorandum in advance of January 1, 2018, and to thereby afford firms continued certainty and enough time to prepare for whatever action is prompted by the review. On the cost side, as noted above, the Department now believes that investor losses associated with either the NPRM approach (a 60-day delay alone) or this final rule delaying applicability dates would be relatively small. As opposed to a full delay of all conditions until January 1, 2018, this final rule's application of the Impartial Conduct Standards beginning on June 9, 2017, helps ensure that retirement investors will experience gains from a higher conduct standard and minimizes the potential for an undue reduction in those gains as compared to the full protections of all the PTEs' conditions.

The Department also considered the possible impact of a 90-day or longer delay in the application of the fiduciary standards and all conditions set forth in the Fiduciary Rule and PTEs. Such a longer delay likely would result in too little additional cost saving to justify the additional investor losses, which could be quite large. Under this final rule, the Department expects that over time investors will come to realize much of the gains due to the Impartial Conduct Standards. A longer delay in the application of the Fiduciary Rule and PTEs and those standards would deprive investors of important fiduciary protections for a longer time, resulting in larger investor losses.

The Department also considered a scenario where the fiduciary definition in the Rule and Impartial Conduct Standards in the PTEs take effect on April 10, 2017 as originally planned, while the remaining conditions in the PTEs become applicable on January 1, 2018. This approach was suggested by several commenters claiming that the delay is not necessary to conduct the examination required by the Presidential Memorandum.[23] This approach arguably might minimize any reduction to investor gains. The Department did not adopt this alternative, however, because it would not provide the regulated community with sufficient notice and time to comply, and the resultant disruptions attributable to the short time frame could overshadow any benefits.

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.

The Department has sent a request to OMB to modify the information collections contained in the Fiduciary Rule and PTEs. The Department will notify the public regarding OMB's response to its request in a separate **Federal Register** Notice. The information collection requirements

[23] For example, see the commenter letter submitted by Consumer Federation of America on March 17, 2017.

contained in the Rule and PTEs are as follows.

Final Rule: The information collections in the Rule are approved under OMB Control Number 1210–0155. Paragraph (b)(2)(i) requires that certain ''platform providers'' provide disclosure to a plan fiduciary. Paragraphs (b)(2)(iv)(C) and (D) require asset allocation models to contain specific information if they furnish and provide certain specified investment educational information. Paragraph (c)(1) requires a disclosure to be provided by a person to an independent plan fiduciary in certain circumstances for them to be deemed not to be an investment advice fiduciary. Finally, paragraph (c)(2) requires certain counterparties, clearing members and clearing organizations to make a representation to certain parties so they will not be deemed to be investment advice fiduciaries regarding certain swap transactions required to be cleared under provisions of the Dodd-Frank Act.

For a more detailed discussion of the information collections and associated burden, see the Department's PRA analysis at 81 FR 20946, 20994.

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. 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).

Section IX provides a transition period under which relief from these prohibitions is available for Financial Institutions and advisers during the period between the applicability date and January 1, 2018 (the ''Transition Period''). As a condition of relief during the Transition Period, Financial Institutions were required to provide a disclosure with a written statement of fiduciary status and certain other information to all retirement investors (in ERISA plans, IRAs, and non-ERISA plans) prior to or at the same time as the execution of recommended transactions (the ''Transition Disclosure''). The final rule eliminates and removes the burden from the ICR for the Transition Disclosure requirement for which the Department estimated that 31 million Transition Disclosures would be sent at a cost of $42.8 million during the transition period. This final rule therefore removes this burden.

For a more detailed discussion of the information collections and associated burden, 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. 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).).

Section VII provides a transition period under which relief from these prohibitions is available for Financial Institutions and advisers during the period between the applicability date and January 1, 2018 (the ''Transition Period''). As a condition of relief during the Transition Period, Financial Institutions were required to provide a disclosure with a written statement of fiduciary status and certain other information to all retirement investors (in ERISA plans, IRAs, and non-ERISA plans) prior to or at the same time as the execution of recommended transactions (the ''Transition Disclosure''). This final rule eliminates and removes the burden from the ICR for the Transition Disclosure requirement for which the Department estimated that 2.5 million Transition Disclosures would be sent at a cost of $2.9 million during the Transition Period. This final rule therefore removes this burden.

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

Amended PTE 75–1: The information collections in Amended PTE 75–1 are approved under OMB Control Number 1210–0092. Part V, as amended, requires that prior to an extension of credit, the plan must receive from the fiduciary written disclosure of (i) the rate of interest (or other fees) that will apply and (ii) the method of determining the balance upon which interest will be charged in the event that the fiduciary extends credit to avoid a failed purchase or sale of securities, as well as prior written disclosure of any changes to these terms. It also requires broker-dealers engaging in the transactions to maintain records demonstrating compliance with the conditions of the PTE.

For a more detailed discussion of the information collections and associated burden, see the Department's PRA analysis at 81 FR 21139, 21145. The Department concluded that the ICRs contained in the amendments to Part V impose no additional burden on respondents.

Amended PTE 86–128: The information collections in Amended PTE 86–128 are approved under OMB Control Number 1210–0059. As amended, Section III of the PTE requires Financial Institutions to make certain disclosures to plan fiduciaries and owners of managed IRAs in order to receive relief from ERISA's and the Code's prohibited transaction rules for the receipt of commissions and to engage in transactions involving mutual fund shares. Financial Institutions relying on either PTE 86–128 or PTE 75–1, as amended, are required to maintain records necessary to demonstrate that the conditions of these PTEs have been met.

For a more detailed discussion of the information collections and associated burden, see the Department's PRA analysis at 81 FR 21181, 21199.

Amended PTE 84–24: The information collections in Amended PTE 84–24 are approved under OMB Control Number 1210–0158. 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 final rule delays the applicability of amendments to PTE 84–24 until

January 1, 2018, except that the Impartial Conduct Standards will become 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 estimate from the proposed rule.

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

These paperwork burden estimates, which are substantially derived from compliance with conditions that will apply after January 1, 2018, over the three-year ICR approval period, 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.

Estimated Number of Annual Responses: 34,095,501 during the first year and 72,282,441 during subsequent years.

Frequency of Response: When engaging in exempted transaction.

Estimated Total Annual Burden Hours: 2,701,270 during the first year and 2,832,369 in subsequent years.

Estimated Total Annual Burden Cost: $2,436,741,143 during the first year and $574,302,408 during subsequent years.

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.

Estimated Number of Annual Responses: 2,463,803 during the first year and 3,018,574 during subsequent years.

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

Estimated Total Annual Burden Hours: 85,457 hours during the first year and 56,197 hours in subsequent years.

Estimated Total Annual Burden Cost: $1,953,184,167 during the first year and $431,468,619 in subsequent years.

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 proposed 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 Department has determined that this final rule will have a significant economic impact on a substantial number of small entities, and hereby provides this FRFA. As noted above, the Department is taking regulatory action to delay the applicability date of the fiduciary definition in the Rule and Impartial Conduct Standards in the PTEs until June 9, 2017, and remaining conditions for covered transactions in the BIC Exemption and Principal Transactions Exemption until January 1, 2018. In addition, the Department is delaying the applicability of amendments to Prohibited Transaction Exemption 84–24 until January 1, 2018, other than the Impartial Conduct Standards, which will become applicable on June 9, 2017. This final rule is intended to reduce any unnecessary disruption that could occur in the marketplace if the applicability date of the Rule and PTEs occurs while the Department examines the Rule and PTEs as directed in the Presidential Memorandum. In the face of uncertainty and widespread questions about the Fiduciary Rule's future or possible repeal, many financial firms slowed or halted their efforts to prepare for full compliance on April 10. Consequently, failure to delay that applicability date could jeopardize firms' near-term ability and/or propensity to serve classes of customers, and both firms and investors could suffer.

The Small Business Administration (SBA) defines a small business in the Financial Investments and Related Activities Sector as a business with up to $38.5 million in annual receipts. The Department examined the dataset obtained from SBA which contains data on the number of firms by NAICS codes, including the number of firms in given revenue categories. This dataset allowed the Department to estimate the number of firms with a given NAICS code that falls below the $38.5 million threshold to be considered a small entity by the SBA. However, this dataset alone does not provide a sufficient basis for the Department to estimate the number of small entities affected by the rule. Not all firms within a given NAICS code would be affected by this rule, because being an ERISA fiduciary relies on a functional test and is not based on industry status as defined by a NAICS code. Further, not all firms within a given NAICS code work with ERISA-covered plans and IRAs.

Over 90 percent of broker-dealers (BDs), registered investment advisers, insurance companies, agents, and consultants are small businesses according to the SBA size standards (13 CFR 121.201). Applying the ratio of entities that meet the SBA size standards to the number of affected entities, based on the methodology described at greater length in the RIA of the Fiduciary Rule, the Department estimates that the number of small entities affected by this final rule is 2,438 BDs, 16,521 Registered Investment Advisors, 496 insurers, and 3,358 other ERISA service providers. For purposes of the RFA, the Department continues to consider an employee benefit plan with fewer than 100 participants to be a small entity. The 2013 Form 5500 filings show nearly 595,000 ERISA covered retirement plans with less than 100 participants.

Based on the foregoing, the Department estimates that small entities would save approximately $74.1 million in compliance costs due to the delays of the applicability dates described in this document.[24] This estimate is a subset of the cost savings discussed in the RIA, but is an estimate of cost savings only for small entities. As highlighted in the Final Regulatory Flexibility Act Analysis for the Fiduciary Rule, 96.2, 97.3, and 99.3 percent of BDs, Registered Investment Advisors, and Insurers respectively are estimated to meet the SBAs definition of small business. These cost savings are substantially derived from foregone on-going compliance requirements related to the transition notice requirements for the BIC Exemption and the Principal Transactions Exemption, data collection to demonstrate satisfaction of fiduciary requirements, and retention of data to demonstrate the satisfaction of

[24] This estimate includes savings from notice requirements. Savings from notice requirements include savings from all firms because it is difficult to break out cost savings only from small entities as defined by SBA.

conditions of the exemption during the Transition Period.

As discussed above, most firms affected by this final rule meet the SBA's definition of a small business. Therefore, the discussion of the comments received on the proposed rule in Section B. and alternatives in Section C.1.c, is relevant and cross-referred to for purpose of this Regulatory Flexibility Act analysis.

4. Congressional Review Act

The final rule extending the applicability date 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. Although the CRA generally requires that major rules become effective no sooner than 60 days after Congress receives the required report, the CRA allows the issuing agency to make a rule effective sooner, if the agency makes a good cause finding that such public procedure is impracticable, unnecessary, or contrary to the public interest. The Department has made such a good cause finding for this rule (as discussed in further detail below in Section C.6 of this document), including the basis for that finding. The Presidential Memorandum, directing the Department to conduct an updated legal and economic analysis, was issued on February 3, 2017, only 67 days before the Rule and PTEs were scheduled to become applicable. The Department has determined it would be impracticable for it to conclude any delay of this rulemaking more than 60 days before the April 10, 2017 applicability date.

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, the final rule extending the applicability date does not include any federal mandate that we expect 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. Effective Date and Good Cause Under 553(d)(1), (3)

The extension of the applicability date of the Rule and PTEs is effective immediately upon publication of the final rule in the **Federal Register**. Under 5 U.S.C. 553(d) (Administrative Procedure Act), an agency may determine that its rulemaking should become effective more quickly than the 30 days after publication that is otherwise required. This is appropriate if the rule relieves a restriction, or if the agency finds, and publishes, good cause to accelerate the effective date. The Department has determined that a delay of the applicability date of the Rule and PTEs relieves a restriction and therefore may appropriately become effective immediately. Additionally, for all of the reasons set forth in Sections B and C, the Department has determined that there is good cause for making the rule effective immediately. The APA provision is intended to ensure that affected parties have a reasonable amount of time to adjust their behavior to comply with new regulatory requirements. This final rule, which delays for 60 days regulatory requirements that would otherwise apply as of April 10, 2017, fulfills that purpose. Moreover, if the final rule's 60-day delay were not immediately effective, significant provisions of the Rule and PTEs could become applicable on April 10 before the delay takes effect, resulting in a period in which the Rule, fiduciary obligations, and notice and disclosure requirements would become applicable before becoming inapplicable again. Such a gap period would result in a chaotic transition to fiduciary standards that would create additional confusion, uncertainty, and expense, thereby defeating the purposes of the delay. The resulting disorder would be contrary to principles of fundamental fairness and could increase costs, not only for firms and advisers, but for the retirement investors that they serve. The Department also believes that making the rule immediately effective will provide plans, plan fiduciaries, plan participants and beneficiaries, IRAs, IRA owners, financial services providers and other affected service providers the level of certainty that the rule is final and not subject to further modification without additional public notice and comment that will allow them to immediately resume and/or complete preparations for the provisions of the Rule and PTEs that will become applicable on June 9, 2017. Accordingly, the Department has concluded that providing certainty, by making the delay effective immediately, would be a more reasonable and fair path forward. In addition, the Presidential Memorandum ordering the Department to reconsider its legal and economic analysis was issued only 67 days before the applicability date and generated a high volume of comments; it would have been impracticable for the Department to finish any public rulemaking process quickly enough to provide an effective date 30 days after publication.

7. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment, or otherwise promulgates, a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. OMB's interim guidance, issued on February 2, 2017, explains that for Fiscal Year 2017 the above requirements only apply to each new ''significant regulatory action that imposes costs,'' and that ''costs should be measured as the opportunity cost to society.'' The impacts of today's final rule are categorized consistently with the analysis of the original Fiduciary Rule, and the Department has also concluded that the impacts identified in the Regulatory Impact Analysis accompanying the 2016 final rule may still be used as a basis for estimating the potential impacts of that final rule, were it not being modified today. 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 are reduced by today's final rule, are presently categorized as cost savings (or negative costs), and impacts of the Fiduciary Rule that were identified in the 2016 analysis as a combination of transfers and positive benefits, and that are reduced by today's final rule, are categorized as a combination of (opposite-direction) transfers and negative benefits. Accordingly, OMB has determined that this final rule extending the applicability date does not impose costs that would trigger the above requirements of Executive Order 13771.

D. Supplemental Description of PTEs Available to Investment Advisers

When it adopted the Fiduciary Rule in 2016, the Department also granted the new BIC Exemption [25] and Principal Transactions Exemption,[26] to facilitate the provision of investment advice in retirement investors' best interest. In the absence of an exemption, investment advice fiduciaries would be statutorily prohibited under ERISA and the Code from receiving compensation as a result of their investment advice, and from engaging in certain other transactions, involving plan and IRA customers. These new exemptions provided broad relief from the prohibited transaction provisions for investment advice fiduciaries operating in the retail marketplace. The Department also expanded an existing exemption to permit investment advice fiduciaries to receive compensation for extending credit to avoid failed securities transactions. *See* PTE 75–1, Part V.[27]

At the same time that it granted the new exemptions, the Department amended a number of previously granted exemptions to incorporate the Impartial Conduct Standards as conditions. In some cases, previously granted exemptions were revoked or were narrowed in scope, with the aim that investment advice fiduciaries would rely primarily on the BIC Exemption and Principal Transactions Exemption when they provided advice to retirement investors in the retail marketplace. These amendments were, as a whole, intended to ensure that retirement investors would consistently be protected by Impartial Conduct Standards, regardless of the particular exemption upon which an investment advice fiduciary relies.

As discussed in Sections B and C above, the Department has determined that the Impartial Conduct Standards in the new exemptions and amendments to previously granted exemptions should become applicable on June 9, 2017, so that retirement investors will be protected during the period in which the Department conducts its examination of the Fiduciary Rule. Accordingly, this document extends for 60 days the applicability dates of the BIC Exemption and the Principal Transactions Exemption and requires adherence to the Impartial Conduct Standards (including the ''best interest'' standard) only, as conditions of the transition period through January 1, 2018. Thus, the fiduciary definition in the Rule published on April 8, 2016, and Impartial Conduct Standards in these exemptions, are applicable on June 9, 2017, while compliance with other conditions for covered transactions, such as the contract requirement, in these exemptions is not required until January 1, 2018. This document also delays the applicability of amendments to Prohibited Transaction Exemption 84–24 until January 1, 2018, other than the Impartial Conduct Standards, which will become applicable on June 9, 2017. Finally, this document extends the applicability dates of amendments to other previously granted exemptions to June 9, 2017. Taken together, these exemptions provide broad relief to fiduciary advisers, all of whom will be subject to the Impartial Conduct Standards under the exemptions' terms. A brief description of the exemptions, and their applicability dates, follows.

BIC Exemption and Principal Transactions Exemption

Both the BIC Exemption and the Principal Transactions Exemption will become applicable on June 9, 2017. The periods of transition relief (Section IX of the BIC Exemption and Section VII of the Principal Transactions Exemption) are amended to extend from June 9, 2017, through January 1, 2018. The Impartial Conduct Standards set forth in the transition relief are applicable June 9, 2017. In addition, Section II(h) of the BIC Exemption is amended to delay conditions for robo-advice providers that are Level Fee Fiduciaries other than the Impartial Conduct Standards, which are applicable on June 9, 2017; these entities are excluded from relief in Section IX but the Department determined that the transition relief should apply to them as well. The preambles to the BIC Exemption (81 FR 21026–32) and the Principal Transactions Exemption (81 FR 21105–09) provide an extensive discussion of the Impartial Conduct Standards of each exemption.

The remaining conditions of Section IX of the BIC Exemption and Section VII of the Principal Transactions Exemption, other than the Impartial Conduct Standards, will not be applicable during the Transition Period.[28] These conditions would have required a written statement of fiduciary status, specified disclosures, and a written commitment to adhere to the Impartial Conduct Standards; designation of a person or persons responsible for addressing material conflicts of interest and monitoring advisers' adherence to the Impartial Conduct Standards; and compliance with the recordkeeping requirements of the exemptions. Absent additional changes to the Exemptions, these conditions (and others) will first become applicable on January 1, 2018, after the Transition Period closed. *See* BIC Exemption Sections II(b), II(c), II(d)(2), II(e) and V; Principal Transactions Exemption Sections II(b), II(c), II(d)(2), II(e) and V.

PTE 84–24

PTE 84–24 [29] is a previously granted exemption for transactions involving insurance and annuity contracts, which was amended in April 2016 to include the Impartial Conduct Standards as conditions and to revoke relief for annuity contracts other than ''fixed rate annuity contracts.'' [30] By the amendment's terms, the exemption would no longer apply to transactions involving fixed indexed annuity contracts and variable annuity contracts as of April 10, 2017.

The Department is now delaying the applicability date of the April 2016 Amendments to PTE 84–24 until January 1, 2018, except for the *Section II. Impartial Conduct Standards* and the related definitions of ''Best Interest'' and ''Material Conflict of Interest,'' which will become applicable on June 9, 2017.[31] Therefore, from June 9, 2017, until January 1, 2018, insurance agents, insurance brokers, pension consultants and insurance companies will be able to continue to rely on PTE 84–24, as previously written,[32] for the recommendation and sale of fixed indexed, variable, and other annuity contracts to plans and IRAs,[33] subject to

[25] 81 FR 21002 (April 8, 2016), as corrected at 81 FR 44773 (July 11, 2016).

[26] 81 FR 21089 (April 8, 2016), as corrected at 81 FR 44784 (July 11, 2016).

[27] Exemptions from Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks, 81 FR 21139 (April 8, 2016).

[28] See Sections IX(d)(2)–(4) of the BIC Exemption and Sections VII(d)(2)-(4) of the Principal Transactions Exemption.

[29] Prohibited Transaction Exemption 84–24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies and Investment Company Principal Underwriters, 49 FR 13208 (April 3, 1984), as corrected 49 FR 24819 (June 15, 1984), as amended 71 FR 5887 (Feb. 3, 2006), and as amended 81 FR 21147 (April 8, 2016).

[30] The term ''Fixed Rate Annuity Contract'' is defined in Section VI(k) of the amended exemption.

[31] See 81 FR 21176 (Apr. 8, 2016), PTE 84–24 Section VI(b) (defining Best Interest) and Section VI(h) (defining Material Conflict of Interest).

[32] *See* 71 FR 5887 (Feb. 3, 2006).

[33] *See* PTE 2002–13, 67 FR 9483 (March 1, 2002) (preamble discussion of certain exemptions,

the addition of the Impartial Conduct Standards.[34]

The purpose of this partial delay of the amendment's applicability date is to minimize any concerns about potential disruptions in the insurance industry during the transition period and consideration of the Presidential Memorandum. While the Department believes that most parties receiving compensation in connection with annuity recommendations can readily rely on the broad transition exemption in the BIC Exemption, discussed above, some parties have expressed a preference to continue to rely on PTE 84–24, as amended in 2006, which has historically been available to the insurance industry for all types of annuity products. The Department notes that it is considering, but has not yet finalized, additional exemptive relief that is relevant to the insurance industry in determining its approach to complying with the Fiduciary Rule. *See* Proposed BIC Exemption for Insurance Intermediaries.[35]

PTE 86–128 and PTE 75–1, Parts I and II

In April 2016, the Department also amended PTE 86–128, which permits fiduciaries to receive compensation in connection with certain securities transactions, to require fiduciaries relying on the exemption to comply with the Impartial Conduct Standards, and revoked relief for investment advice fiduciaries to IRAs who would now rely on the BIC Exemption, rather than PTE 86–128. In addition, the Department revoked PTE 75–1, Part II(2), which had granted relief for certain mutual fund purchases between fiduciaries and plans, and amended PTE 86–128 to provide similar relief, subject to the additional conditions of PTE 86–128, including the Impartial Conduct Standards. Rather than becoming applicable on April 10, 2017, as provided by the April 2016 rulemaking, these amendments will now become applicable on June 9, 2017, reflecting a sixty day extension. In addition, the transition exemption in the BIC Exemption will be broadly available to investment advice fiduciaries engaging in the transactions permitted by PTE 86–128.

The April 2016 amendments also provided for the revocation of PTE 75–1, Part I, which provides an exemption for non-fiduciaries to perform certain services in connection with securities transactions. As discussed in the preamble to the amendments, the relief provided by PTE 75–1, Part I was duplicative of the statutory exemptions for service providers set forth in ERISA section 408(b)(2) and Code section 4975(d)(2).[36] Rather than becoming applicable on April 10, 2017, as provided in the April 2016 rulemaking, these amendments will now become applicable in their entirety on June 9, 2017, reflecting a sixty day extension. For a full discussion of the 2016 amendments to PTE 86–128 and 75–1, Parts I and II, *see* 81 FR 21181.

PTEs 75–1, Parts III and IV, 77–4, 80–83 and 83–1

The Department amended the following previously granted exemptions to require fiduciaries relying on the exemptions to comply with the Impartial Conduct Standards.[37] Because consistent application of the Impartial Conduct Standards is the Department's objective, these amendments will be delayed 60 days and become applicable June 9, 2017.

- PTE 75–1, Part III and IV, Exemptions from Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks.
- PTE 77–4, Class Exemption for Certain Transactions Between Investment Companies and Employee Benefit Plans.
- PTE 80–83, Class Exemption for Certain Transactions Involving Purchase of Securities Where Issuer May Use Proceeds to Reduce or Retire Indebtedness to Parties in Interest.
- PTE 83–1 Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts.

For a full discussion of these amendments, *see* 81 FR 21208.

PTE 75–1, Part V

In April 2016, the Department amended PTE 75–1, Part V, to permit investment advice fiduciaries to receive compensation for extending credit to a plan or IRA to avoid a failed securities transaction. Thus, the amendment expanded the scope of the existing exemption and allowed investment advice fiduciaries to receive compensation for such transactions, provided they make certain disclosures in advance regarding the interest that will be charged. The amendment will be useful to fiduciaries that are newly-covered under the Rule, which will become applicable on June 9, 2017, after a sixty day extension. Accordingly, this amendment too will become applicable on June 9, 2017. For a full discussion of the amendment, *see* 81 FR 21139.

E. List of Amendments to the Applicability Dates of the Prohibited Transaction Exemptions

Following are amendments to the applicability dates of the BIC Exemption and other PTEs adopted and amended in connection with the Fiduciary Rule defining who is a fiduciary for purposes of ERISA and the Code. The amendments are effective as of April 10, 2017. For the convenience of users, the text of the BIC Exemption, the Principal Transactions Exemption, and PTE84–24, as amended on this date, appear restated in full on EBSA's Web site. The Department finds that the exemptions with the amended applicability dates are administratively feasible, in the interests of plans, their participants and beneficiaries and IRA owners, and protective of the rights of plan participants and beneficiaries and IRA owners.

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

A. The date ''April 10, 2017'' is deleted and ''June 9, 2017'' is inserted in its place as the *Applicability date* in the introductory **DATES** section of the exemption.

B. *Section II(h)—Level Fee Fiduciaries* provides streamlined conditions for ''Level Fee Fiduciaries.'' In accordance with the exemption's Applicability Date, these conditions—including the Impartial Conduct Standards set forth in Section II(h)(2)—are applicable on June 9, 2017, but they are not required for parties that can comply with Section IX. For Level Fee Fiduciaries that are robo-advice providers, and therefore not eligible for Section IX, the Impartial Conduct Standards in Section II(h)(2) are applicable June 9, 2017 but the remaining conditions of Section II(h) are applicable January 1, 2018. The amended applicability dates are reflected in new Section II(h)(4).

C. *Section IX—Transition Period for Exemption* provides an exemption for the Transition Period, subject to conditions set forth in Section IX(d). The Transition Period identified in Section IX(a) is amended to extend from June 9, 2017, to January 1, 2018, rather than April 10, 2017, to January 1, 2018. Section IX(d)(1), which sets forth

including PTE 84–24, that apply to plans described in Code section 4975).

[34] The Impartial Conduct Standards are re-designated as Section VII of the 2006 exemption. PTE 84–24 also historically provided relief for certain transactions involving mutual fund principal underwriters that was revoked for transactions involving IRAs. The applicability date of that revocation is also delayed until January 1, 2018; accordingly, such transactions can continue until that time subject to the applicability of the Impartial Conduct Standards.

[35] 82 FR 7336 (January 19, 2017).

[36] 81 FR 21181, 21198–99 (April 8, 2016).

[37] 81 FR 21208 (April 8, 2016).

Impartial Conduct Standards, is applicable June 9, 2017. The remaining conditions of Section IX(d) are not applicable in the Transition Period. These conditions are also required in Sections II and V of the exemption, which will apply after the Transition Period.

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 ''April 10, 2017'' is deleted and ''June 9, 2017'' is inserted in its place as the *Applicability date* in the introductory **DATES** section,

B. *Section VII—Transition Period for Exemption* sets forth an exemption for the Transition Period subject to conditions set forth in Section VII(d). The Transition Period identified in Section VII(a) is amended to extend from June 9, 2017, to January 1, 2018, rather than April 10, 2017, to January 1, 2018. Section VII(d)(1), which sets forth Impartial Conduct Standards, is applicable June 9, 2017. The remaining conditions of Section VII(d) are not applicable in the Transition Period. These conditions are also required in Sections II and V of the exemption, which will apply after the Transition Period.

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 ''April 10, 2017'' is replaced with ''January 1, 2018'' as the *Applicability date* in the introductory **DATES** section of the amendment, except as it applies to *Section II. Impartial Conduct Standards,* and Sections VI(b) and (h), which define ''Best Interest,'' and ''Material Conflicts of Interest,'' all of which are applicable June 9, 2017.

B. *Section II—Impartial Conduct Standards,* is redesignated as Section VII. The introductory clause is amended to reflect the June 9, 2017 applicability date of that section, as follows: ''On or after June 9, 2017, if the insurance agent or broker, pension consultant, insurance company or investment company Principal Underwriter is a fiduciary within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B) with respect to the assets involved in the transaction, the following conditions must be satisfied, with respect to the transaction to the extent they are applicable to the fiduciary's actions[.]''

C. The definition of ''Best Interest,'' is redesignated as Section VI(h) and the definition of ''Material Conflict of Interest'' is redesignated as Section VI(i).

4. The following exemptions are amended by deleting the date ''April 10, 2017'' and replacing it with ''June 9, 2017,'' as the *Applicability date* in the introductory **DATES** section:

A. Prohibited Transaction Exemption 86–128 for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers and Prohibited Transaction Exemption 75–1, Exemptions from Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks, Parts I and II;

B. Prohibited Transaction Exemption 75–1, Exemptions from Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks, Parts III and IV;

C. Prohibited Transaction Exemption 77–4, Class Exemption for Certain Transactions Between Investment Companies and Employee Benefit Plans;

D. Prohibited Transaction Exemption 80–83, Class Exemption for Certain Transactions Involving Purchase of Securities Where Issuer May Use Proceeds to Reduce or Retire Indebtedness to Parties in Interest; and

E. Prohibited Transaction Exemption 83–1 Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts.

F. Prohibited Transaction Exemption 75–1, Exemptions from Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks, Part V.

List of Subjects in 29 CFR Parts 2510

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, Securities.

For the reasons set forth above, the Department amends part 2510 of subchapter B of chapter XXV of title 29 of the Code of Federal Regulations as follows:

SUBCHAPTER B—DEFINITIONS AND COVERAGE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, G, AND L OF THIS CHAPTER

■ 1. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012); Secs. 2510.3–21, 2510.3–101 and 2510.3–102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 237 (2012), E.O. 12108, 44 FR 1065 (Jan. 3, 1979) and 29 U.S.C. 1135 note. Sec. 2510.3–38 is also issued under sec. 1, Pub. L. 105–72, 111 Stat. 1457 (1997).

§ 2510.3–21 [Amended]

■ 2. Section 2510.3–21 is amended in paragraphs (h)(2), (j)(1) introductory text, and (j)(3) by removing the date ''April 10, 2017'' and adding in its place ''June 9, 2017''.

Signed at Washington, DC, this 3rd day of April, 2017.

Timothy D. Hauser,

Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2017–06914 Filed 4–4–17; 4:15 pm]

BILLING CODE 4510–29–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0270]

Drawbridge Operation Regulation; Cerritos Channel, Long Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Henry Ford Avenue railroad bridge across Cerritos Channel, mile 4.8 at Long Beach, CA. The deviation is necessary to allow the bridge owner to replace the operating machinery of the bridge. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 6 a.m. on April 24, 2017 to 6:30 p.m. on May 27, 2017.

ADDRESSES: The docket for this deviation, [USCG–2017–0270], is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–