to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

**FOR FURTHER INFORMATION CONTACT:**

Jenny Scott, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2166.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) enables FDA to better protect public health by helping to ensure the safety and security of the food supply. It enables FDA to focus more on preventing food safety problems rather than relying primarily on reacting to problems after they occur. FSMA recognizes the important role industry plays in ensuring the safety of the food supply, including the adoption of modern systems of preventive controls in food production.

Section 103 of FSMA amended the Federal Food, Drug, and Cosmetic Act (FD&C Act), in section 418 of the FD&C Act (21 U.S.C. 350g), by adding requirements for hazard analysis and risk-based preventive controls for establishments that are required to register as food facilities under our regulations, in 21 CFR part 1, subpart H, in accordance with section 415 of the FD&C Act (21 U.S.C. 350d). We have established regulations to implement these requirements within part 117 (21 CFR part 117).

In the **Federal Register** of August 24, 2016 (81 FR 57816), we announced the availability of several chapters of a multichapter draft guidance for industry entitled ''Hazard Analysis and Risk-Based Preventive Controls for Human Food.'' We now are announcing the availability of an additional draft chapter of this multichapter guidance for industry. We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

The multichapter draft guidance for industry is intended to explain our current thinking on how to comply with the requirements for hazard analysis and risk-based preventive controls under part 117, principally in subparts C and G. The chapter that we are announcing in this document is entitled ''Chapter Six—Use of Heat Treatments as a Process Control.''

We intend to announce the availability for public comment of additional chapters of the draft guidance as we complete them.

## II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 117 have been approved under OMB control number 0910–0751.

## III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: August 22, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017–18464 Filed 8–30–17; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF LABOR

## Employee Benefits Security Administration

## 29 CFR Part 2550

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

**ZRIN 1210–ZA27**

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

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of proposed amendments to PTE 2016–01, PTE 2016–02, and PTE 84–24.

**SUMMARY:** This document proposes to extend the special transition period under sections II and IX of the Best Interest Contract Exemption and section VII of the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs. This document also proposes to delay the applicability of certain amendments to Prohibited Transaction Exemption 84–24 for the same period. The primary purpose of the proposed amendments is to give the Department of Labor the time necessary to consider possible changes and alternatives to these exemptions. The Department is particularly concerned that, without a delay in the applicability dates, regulated parties may incur undue expense to comply with conditions or requirements that it ultimately determines to revise or repeal. The present transition period is from June 9, 2017, to January 1, 2018. The new transition period would end on July 1, 2019. The proposed amendments to these exemptions would affect participants and beneficiaries of plans, IRA owners and fiduciaries with respect to such plans and IRAs.

**DATES:** Comments must be submitted on or before September 15, 2017.

**ADDRESSES:** All written comments should be sent to the Office of Exemption Determinations by any of the following methods, identified by RIN 1210–AB82:

*Federal eRulemaking Portal: http://www.regulations.gov* at Docket ID number: EBSA–2017–0004. Follow the instructions for submitting comments.

*Email to: EBSA.FiduciaryRuleExamination@dol.gov.*

*Mail:* Office of Exemption Determinations, EBSA, (Attention: D–11712, 11713, 11850), U.S. Department of Labor, 200 Constitution Avenue NW., Suite 400, Washington, DC 20210.

*Hand Delivery/Courier:* OED, EBSA (Attention: D–11712, 11713, 11850), U.S. Department of Labor, 122 C St. NW., Suite 400, Washington, DC 20001.

Comments will be available for public inspection in the Public Disclosure Room, EBSA, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210. Comments will also be available online at *www.regulations.gov,* at Docket ID number: EBSA–2017–0004 and *www.dol.gov/ebsa,* at no charge. Do not include personally identifiable information or confidential business information that you do not want publicly disclosed. Comments online can be retrieved by most Internet search engines.

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

**SUPPLEMENTARY INFORMATION:**

## A. Procedural Background

*ERISA and the 1975 Regulation*

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

*The New Fiduciary Rule and Related Exemptions*

On April 8, 2016, the Department replaced the 1975 regulation with a new regulatory definition (the ''Fiduciary Rule''). The Fiduciary Rule defines who is a ''fiduciary'' of an employee benefit plan under section 3(21)(A)(ii) of ERISA as a result of giving investment advice to a plan or its participants or beneficiaries. The Fiduciary Rule also applies to the definition of a ''fiduciary'' of a plan in the 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 under the 1975 regulation. On the same date, the Department published two new administrative class exemptions from the prohibited transaction provisions of ERISA (29 U.S.C. 1106) and the Code (26 U.S.C. 4975(c)(1)): The Best Interest Contract Exemption (BIC Exemption) and the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Principal Transactions Exemption), as well as amendments to previously granted exemptions (collectively referred to as ''PTEs,'' unless otherwise indicated). The Fiduciary Rule and PTEs had an original applicability date of April 10, 2017.

*Presidential Memorandum*

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

*First Delay of Applicability Dates*

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

*Request for Information*

On July 6, 2017, the Department published in the **Federal Register** a Request for Information (RFI). 82 FR 31278. The purpose of the RFI was to augment some of the public commentary and input received in response to the March 2, 2017, request for comments on issues raised in the Presidential Memorandum. In particular, the RFI sought public input that could form the basis of new exemptions or changes to the Rule and PTEs. The RFI also specifically sought input regarding the advisability of extending the January 1, 2018, applicability date of certain provisions in the BIC Exemption, the Principal Transactions Exemption, and PTE 84–24. Comments relating to extension of the January 1, 2018, applicability date of certain provisions were requested by July 21, 2017. All other comments were requested by August 7, 2017. As of July 21, the Department had received approximately 60,000 comment and petition letters expressing a wide range of views on whether the Department should grant an additional delay and what should be the duration of any such delay. These comments are discussed in Section C, below, in connection with the proposed amendments.

## B. Current Transition Period

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

Although the Fiduciary Rule, BIC Exemption, and Principal Transactions Exemption first became applicable on June 9, 2017, transition relief is provided throughout the current Transition Period, which runs from June 9, 2017, through January 1, 2018. ''Financial Institutions'' and ''Advisers,'' as defined in the exemptions, who wish to rely on these exemptions for covered transactions during this period must adhere to the ''Impartial Conduct Standards'' only. In general, this means that Financial

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

[2] 82 FR 12319.

[3] 82 FR 16902.

Institutions and Advisers must give prudent advice that is in retirement investors' best interest, charge no more than reasonable compensation, and avoid misleading statements.[4]

The remaining conditions of the BIC Exemption would become applicable on January 1, 2018, absent a further delay of their applicability. This includes the requirement, for transactions involving IRA owners, that the Financial Institution enter into an enforceable written contract with the retirement investor. The contract would include an enforceable promise to adhere to the Impartial Conduct Standards, an express acknowledgement of fiduciary status, and a variety of disclosures related to fees, services, and conflicts of interest. IRA owners, who do not have statutory enforcement rights under ERISA, would be able to enforce their contractual rights under state law. Also, as of January 1, 2018, the exemption requires Financial Institutions to adopt policies and procedures that meet specified conflict-mitigation criteria. In particular, the policies and procedures must be reasonably and prudently designed to ensure that Advisers adhere to the Impartial Conduct Standards and must provide that neither the Financial Institution nor (to the best of its knowledge) its affiliates or related entities will use or rely on quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation, or other actions or incentives that are intended or would reasonably be expected to cause advisers to make recommendations that are not in the best interest of the retirement investor.[5] Financial Institutions would also be required at that time to provide disclosures, both to the individual retirement investor on a transaction basis, and on a Web site.

Similarly, while the Principal Transactions Exemption is conditioned solely on adherence to the Impartial Conduct Standards during the current Transition Period, its remaining conditions also will become applicable on January 1, 2018, absent a further delay of their applicability. The Principal Transactions Exemption permits investment advice fiduciaries to sell to or purchase from plans or IRAs investments in ''principal transactions'' and ''riskless principal transactions''—transactions involving the sale from or purchase for the Financial Institution's own inventory. Conditions scheduled to become applicable on January 1, 2018, include a contract requirement and a policies and procedures requirement that mirror the requirements in the BIC Exemption. The Principal Transactions Exemption also includes some conditions that are different from the BIC Exemption, including credit and liquidity standards for debt securities sold to plans and IRAs pursuant to the exemption and additional disclosure requirements.

*PTE 84–24*

PTE 84–24, which applies to advisory transactions involving insurance and annuity contracts and mutual fund shares, was most recently amended in 2016 in conjunction with the development of the Fiduciary Rule, BIC Exemption, and Principal Transactions Exemption.[6] Among other changes, the amendments included new definitional terms, added the Impartial Conduct Standards as requirements for relief, and revoked relief for transactions involving fixed indexed annuity contracts and variable annuity contracts, effectively requiring those Advisers who receive conflicted compensation for recommending these products to rely upon the BIC Exemption. However, except for the Impartial Conduct Standards, which were applicable beginning June 9, 2017, the remaining amendments are not applicable until January 1, 2018. Thus, because the amendment revoking the availability of PTE 84–24 for fixed indexed annuities is not applicable until January 1, 2018, affected parties (including insurance intermediaries) may rely on PTE 84–24, subject to the existing conditions of the exemption and the Impartial Conduct Standards, for recommendations involving all annuity contracts during the Transition Period.

### C. Comments and Proposed Amendments

Question 1 of the RFI specifically asked whether a delay in the January 1, 2018, applicability date of the provisions in the BIC Exemption, Principal Transactions Exemption and amendments to PTE 84–24 would reduce burdens on financial services providers and benefit retirement investors by allowing for more efficient implementation responsive to recent market developments. This question also made inquiry into risks, advantages, and costs and benefits associated with such a delay.

Many commenters supported delaying the January 1, 2018, applicability dates of these PTEs. For example, one commenter stated that there is ''no question that the comprehensive reexamination directed by the President cannot be completed by January 1, 2018, especially where the record is replete with evidence that the result of that review will be required revisions to the Rule and exemptions, all of which take time.'' [7] In addition, another commenter stated that it believes ''a thorough and thoughtful re-assessment of the Fiduciary Rule, with appropriate coordination with other regulators, will take months'' and that if the Department does not delay the applicability date during this review period, ''the industry has no choice but to continue preparing for the Fiduciary Rule in a form that may never become effective leading to significant wasted expenses that benefits no one.'' [8] Other commenters disagreed, however, asserting that full application of the Fiduciary Rule and PTEs were necessary to protect retirement investors from conflicts of interests and that the applicability dates should not have been delayed from April, 2017, and that the January 1, 2018, date should not be further delayed.[9] At the same time, still others stated their view that the Fiduciary Rule and PTEs should be repealed and replaced, either with the original 1975 regulation or with a substantially revised rule.[10]

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[4] 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.''

[5] During the Transition Period, the Department expects financial institutions to adopt such policies and procedures as they reasonably conclude are necessary to ensure that advisers comply with the impartial conduct standards. During that period, however, the Department does not require firms and advisers to give their customers a warranty regarding their adoption of specific best interest policies and procedures, nor does it insist that they adhere to all of the specific provisions of Section IV of the BIC Exemption as a condition of compliance. Instead, financial institutions retain flexibility to choose precisely how to safeguard compliance with the impartial conduct standards, whether by tamping down conflicts of interest associated with adviser compensation, increased monitoring and surveillance of investment recommendations, or other approaches or combinations of approaches.

[6] 81 FR 21147 (April 8, 2016).

[7] Comment Letter #109 (Securities Industry and Financial Markets Association).

[8] Comment Letter #181 (Voya Financial).

[9] See, *e.g.,* Comment Letter #273 (National Employment Law Project) (''Because these workers need the protections afforded by the full set of Conditions as soon as possible, NELP strongly opposes further delay of the application of any of the Conditions. NELP also disagrees with the Department's decision to even consider an additional delay in the applicability date of the Conditions.'').

[10] *See, e.g.,* Comment Letter #316 (Aeon Wealth Management) (''The current Fiduciary Rule should not be amended or extended in any way. IT

Continued

Among the commenters supporting a delay, some suggested a fixed length of time and others suggested a more open-ended delay. Of those commenters suggesting a fixed length delay, there was no consensus among them regarding the appropriate length, but the range generally was 1 to 2 years from the current applicability date of January 1, 2018.[11] Those commenters suggesting a more open-ended framework for measuring the length of the delay generally recommended that the applicability date be delayed for at least as long as it takes the Department to finish the reexamination directed by the President. These commenters suggested that the length of the delay should be measured from the date the Department, after finishing the reexamination, either decided that there will be no new amendments or exemptions or the date the Department publishes a new exemption or major revisions to the Fiduciary Rule and PTEs.[12]

Regardless of whether advocating for a fixed or open-ended delay, many commenters focused on the uncertain fate of the PTEs. A significant number of industry commenters, for example, stated that because the Department, as part of its ongoing examination under the Presidential Memorandum, has indicated that it is actively considering changes or alternatives to the BIC Exemption, the January 1, 2018, applicability date should be delayed at least until such changes or alternatives are finalized, with a reasonable period beyond that date for compliance. Otherwise, according to these commenters, costly systems changes to comply with the BIC Exemption by January 1, 2018, must commence or conclude immediately, and these costs could prove unnecessary in whole or in part depending on the eventual regulatory outcome. Industry commenters stated that it is widely expected within the financial industry that there will be certain change(s) to the Rule or to the exemption pursuant to the Presidential Memorandum. Industry commenters also expressed concerns that uncertainty concerning expected changes is likely to lead to consumer confusion and inefficient industry development. Several industry commenters indicated their concern that, without additional delays, compliance efforts may prove to be a waste of time and money.[13]

Many commenters argued that, in spite of the level of uncertainty surrounding the ultimate fate of the Fiduciary Rule and PTEs, the Department will need to at least partially modify the Fiduciary Rule and PTEs. These commenters cite the President's Memorandum dated February 3, 2017, requiring the Department to prepare an updated analysis of the likely impact of the Fiduciary Rule on access to retirement information and financial advice, and predict that this analysis will affirm their view that regulatory changes are necessary to avoid adverse impacts on advice, access, costs, and litigation.

Many commenters argue that a delay in the January 1, 2018, applicability date is needed in order for the Department and Secretary of Labor Acosta to coordinate with the Securities and Exchange Commission (SEC) under the new leadership of Chairman Clayton. These commenters assert that meaningful coordination simply is not possible between now and January 1, 2018, on the many important issues affecting retirement investors raised by the Fiduciary Rule and PTEs, including the potential confusion for investors caused by different rules and regulations applying to different types of investment accounts. One commenter suggested that, absent a delay in the January 1, 2018, applicability date, there will be no genuine opportunity for the Department to coordinate with the SEC under the new leadership regimes. The full Fiduciary Rule would become applicable before the SEC had done its own rulemaking, leaving the SEC no choice except to apply the standards in the Fiduciary Rule to all of those investments subject to SEC jurisdiction, write a different rule, which would exacerbate the current confusion and inconsistencies, or to do nothing, according to one commenter.[14] On June 1, 2017, the Chairman of the SEC issued a statement seeking public comments on the standards of conduct for investment advisers and broker dealers when they provide investment advice to retail investors. One commenter asserted that coordination ''suggests that the Department of Labor should await the SEC's receipt and evaluation of information.'' [15] At least one commenter

SHOULD BE COMPLETELY ELIMINATED! It is the first step towards the government taking control of everyone's personal retirement assets.'').

[11] *See, e.g.,* Comment Letter #25 (National Federation of Independent Business (delay at least until January 1, 2019); Comment Letter #159 (Davis & Harman) (delay until at least September 1, 2019); Comment Letter #183 (Morgan Stanley) (at least 18 months); Comment Letter #196 (American Council of Life Insurers) (one year); Comment Letter #208 (Capital Group) (at least January 1, 2019); Comment Letter #246 (Ameriprise Financial) (supports a two-year delay of the January 1, 2018 compliance date of the Rule); Comment Letter #258 (Wells Fargo) (delay at least 24 months); Comment Letter #290 (Annexus and other entities/Drinker, Biddle&Reath) (delay at least until January 1, 2019); Comment Letter #291 (Farmers Financial Solutions) (delay until April 2019).

[12] *See, e.g.,* Comment Letter #134 (Insured Retirement Institute (delay until January 1, 2020, or the date that is 18 months after the Department takes final action on the Fiduciary Rule); Comment Letter #229 (Investment Company Institute) (one year after finalization of modified rule); Comment Letter #109 (Securities Industry and Financial Markets Association) (a minimum of 24 months after completion of the review and publication of final rules); Comment Letter #266 (Edward D. Jones & Co.) (later of July 1, 2019 or one year after the promulgation of any material amendments); Comment Letter #251 (Teachers Insurance and Annuity Association of America) (at least one year after the Department has promulgated changes to the Rule and PTEs); Comment Letter #196 (Prudential Financial) (at least 12 months with new applicability dates in conjunction with proposed changes); Comment Letter #212 (American Bankers Association) (at least twelve months after the effective date of any changes or revisions); Comment Letter #211 (Transamerica) (meaningful period following promulgation of changes to the Fiduciary Rule); Comment Letter #239 (Great-West Financial) (provide no less than a 12 month notice of existing/newly proposed exemptions; and no less than a 12 month notice following any DOL–SEC standards prior to their effective date); Comment Letter #281 (Bank of New York Mellon) (delay for a reasonable period that will allow Department to complete review, finalize changes, and for firms to implement the processes); Comment Letter #259 (Fidelity Investments) (delay the requirements for 6 months following notice if there are no changes to the rule; if there are changes, sufficient additional time in light of the changes); Comment Letter #248 (Bank of America) (delay the applicability date until the DOL finalizes its work and financial firms have a reasonable opportunity to implement its requirements); Comment Letter #222 (Vanguard) (at least 12 to 18 months from the date that the Department publishes its amended Final Rule, including exemptions, or confirms that there will be no other amendments or exemptions).

[13] *See* Comment Letter #180 (TD Ameritrade). *See also* Comment Letter #212 (American Bankers Association) (''it is difficult for institutions to determine where to allocate resources for compliance when the Department itself is in the process of re-examining the Fiduciary Rule's scope and content.''); Comment Letter #211 (Transamerica) (''[f]ailure to extend the January 1 applicability date will result in: (a) Companies such as Transamerica continuing to incur costs and business model changes to prepare for and implement a regulatory regime that might differ materially from the regime that results from the Rule in effect today. . ..''); See Comment Letter #109 (Securities Industry and Financial Markets Association); Comment Letter #293 (the SPARK Institute, Inc.) (''[u]ntil we know whether the Department intends to make changes to avoid the Regulation's negative impacts, and what those changes will be, our implementation efforts will be chasing a moving target. That approach not only results in significant inefficiencies, it also may result in potentially duplicative and unnecessary compliance costs if the Department modifies the Regulation. If the Department is seriously considering ways to reduce those burdens, it must delay the January 1, 2018 applicability date. Otherwise, firms will be forced to continue preparing for a rule that may never go into effect as currently drafted.'').

[14] Comment Letter #159 (Davis & Harman).

[15] Comment Letter #18 (T. Rowe Price Associates). *See also* Comment Letter #72 (National Association of Insurance and Financial Advisors). ([C]oordination with the SEC, which currently is undertaking a parallel public comment process, is essential.'') Other commenters mentioned the need to coordinate with FINRA, state insurance and other

believes that the outcome of such coordination should be that the SEC adopts the concept of the Impartial Conduct Standards, as contained in the PTEs, as a universal standard of care applicable to both brokerage and advisory relationships.[16]

With respect to recent and ongoing market developments, many commenters stated that a delay would allow for more efficient implementation responsive to these innovations, thereby reducing burdens on financial services providers and benefiting retirement investors. For instance, one industry commenter asserted that a delay in the applicability date would provide financial institutions with the necessary time to develop ''clean shares'' programs and minimize disruption for retirement investors. The commenter stated that ''[w]ithout a delay in the applicability date, a broker-dealer firm that believes the direction of travel is towards the clean share will be forced to either eliminate access to commissionable investment advice or make the fundamental business changes required by the Best Interest Contract Exemption in order to continue offering traditional commissionable mutual funds. Both approaches would be incredibly disruptive for investors who could have little choice but to either move to a fee-based advisory program in order to maintain access to advice or enter into a Best Interest Contract only to be transitioned into a clean shares program shortly thereafter, and would make it less likely that firms will evolve to clean shares.'' [17] A different industry commenter noted that serious consideration is being given to the use of mutual fund clean share classes in both fee-based and commissionable account arrangements, but that certain enumerated obstacles prevent their rapid adoption, stating that ''even absent any changes to the rule, more time is needed to develop clean shares and other long-term solutions to mitigate conflicts of interest.'' [18]

Consumer commenters expressed a concern with using recent and ongoing market developments as a basis for a blanket delay. It was asserted that if the Department decides to move forward with a delay, it should only allow firms to take advantage of the delay if they affirmatively show they have already taken concrete steps to harness recent market developments for their compliance plans. For example, one commenter contends that if a broker-dealer has decided that it is more efficient to move straight to clean shares rather than implementing the rule using T shares, the broker-dealer should, as a condition of delay, be required to provide evidence to the Department of the steps that it already has taken to distribute clean shares, including, for example, providing evidence of efforts to negotiate sellers agreements with funds that are offering clean shares. This commenter stated that the Department ''should not provide a blanket delay to all firms, including those firms that have not taken any meaningful, concrete steps to harness recent market developments and have no plans to do so. This narrowly tailored approach has the advantage of benefitting only those firms and, in turn, their customers that are using the delay productively rather than providing an undue benefit to firms that are merely looking for reasons to further stall implementation.'' [19]

With respect to risks to retirement investors from a delay, many industry commenters argue that the risks of a delay are very minimal, as they have largely been mitigated by the existing regulatory structure and the applicability of the Impartial Conduct Standards. For instance, regarding potential additional costs to retirement investors associated with any further delay, many industry commenters stated that these concerns have been mitigated, and indeed addressed by the Department, through the imposition of the Impartial Conduct Standards beginning on June 9, 2017. Various commenters indicated that Financial Institutions have, in fact, taken steps to ensure compliance with the Impartial Conduct Standards. Commenters have also pointed to the SEC and FINRA regulatory regimes as a means to ensure consumers are appropriately protected. It is the position of these commenters that there is little, if any, risk that consumers will be harmed by a delay of the January 1, 2018 applicability date.[20]

By contrast, many commenters representing consumers believe there is risk to consumers in further delaying these PTEs from becoming fully applicable on January 1, 2018. One commenter, for example, focused on the contract provision of the exemption, and expressed concern that delaying that provision would significantly undermine the protections and effectiveness of the rule.[21] Other commenters pointed to the number of covered transactions happening every day and emphasized the compounding nature of the harm if the applicability date is further delayed.[22] According to these commenters, retirement savings face undue risk without all of the protections of the Fiduciary Rule and PTEs. One commenter asserted that ''absent the contract requirement and the legal enforcement mechanism that goes with it, firms would no longer have a powerful incentive to comply with the Impartial Conduct Standards, implement effective anti-conflict policies and procedures, or carefully police conflicts of interest. It could be too easy for firms to claim they are complying with the PTEs, but still pay advisers in ways that encourage and reward them not to.'' [23]

Many commenters asserted that a delay would be advantageous both to retirement investors and firms; and, conversely, that rigid adherence to the

regulators in addition to the SEC. *See, e.g.,* Comment Letter #196 (Prudential Financial) (''assess, in conjunction with the SEC and the appropriate state regulatory bodies that also have jurisdiction with regard to investment advice retirement investors, the appropriate alignment of regulatory responsibility and oversight''); Comment Letter #266 (Edward D. Jones and Co.); Comment Letter #134 (Insured Retirement Institute). *See also* Comment Letter #212 American Bankers Association (mentioning the Office of the Comptroller of the Currency, the Federal Reserve, and the Federal Deposit Insurance Corporation).

[16] See Comment Letter #375 (Stifel Financial) (''As the SEC and DOL consider and coordinate on developing appropriate standards of conduct for retail retirement and taxable accounts, I propose a simple solution: the SEC adopt a principles-based standard of care for Brokerage and Advisory Accounts that incorporates the 'Impartial Conduct Standards'' as set forth in the DOL's Best Interest Contract Exemption.'' And to achieve consistency between retirement and taxable accounts, ''[t]he additional provisions of the Best Interest Contract should be eliminated.'').

[17] Comment Letter #208 (Capital Group).

[18] Comment Letter #229 (Investment Company Institute).

[19] Comment Letter #238 (Consumer Federation of America). *See also* Comment Letter #235 (Better Markets) (''In short, it would be arbitrary and capricious for the DOL to deprive millions of American workers and retirees the full protections and remedies provided by the Rule and the exemptions simply because the DOL may conclude that some adjustments to the Rule would be appropriate, or because some members of industry claim they need additional time to develop new products to help them more profitably navigate the Rule and the exemptions.'').

[20] *See* Comment Letter #147 (American Retirement Association); Comment Letter #222 (Vanguard) (''there is no need to rush to apply the remaining provisions of the Rule to protect investors because the Impartial Conduct Standards that are already applicable will provide sufficient protection for them during the 12–18 month implementation period we propose.''); Comment Letter #180 (TD Ameritrade); Comment Letters #111 and #131 (BARR Financial Services); Comment Letter #134 (Insured Retirement Institute).

[21] *See* Comment Letter #284 (Coalition of 20 Signatories, including AFGE, AFL–CIO, AFSCME, SEIU, NAEFE, Fund Democracy, and others); see also Comment Letter #238 (Consumer Federation of America).

[22] *See* Comment Letter #213 (AARP). *See also* Comment Letter #216 (American Association for Justice) (''As we previously stressed, the earlier delays have harmed investors, and any further delay would augment this problem rather than alleviating it.'').

[23] Comment Letter #238 (Consumer Federation of America).

January 1, 2018, applicability date would be harmful to both groups. With respect to firms, it was argued by many that the harm in terms of capital expenditures and outlays to meet PTE requirements (such as contract, warranty, policies and procedures, and disclosures) that are actively under consideration by the Department and that could change (or even be repealed) should be obvious to the Department.[24] With respect to harm to retirement investors from not delaying the applicability date, on the other hand, one commenter stated that ''the stampede to fee-based arrangements will leave many small and mid-sized investors without access to advice . . .'' and that ''retirement investors are losing access to some retirement products they need to ensure guaranteed lifetime incomes, including variable annuities, whose usage has plummeted. These market developments will cause more leakage and reduce already inadequate retirement resources for millions of retirement savers.'' [25] A different commenter stated that ''some firms announced that retirement investors seeking advice would be prohibited from commission-based accounts or would be barred from purchasing certain products, such as mutual funds and ETFs, in commission-based accounts'' and that ''[u]ntil the industry, with the assistance of regulators, is able to resolve availability of accounts and products previously available to retirement investors, and the mechanisms for payment for advice services, there will be disruption both to the industry and to retirement plans and investors seeking advice.''[26] Another commenter stated that ''it is easy to see how the average client will be confused by correspondence announcing changes to their investment products and business relationship (if the Rule becomes applicable), followed by correspondence announcing additional changes being made for yet another new regulatory scheme (if the Rule is rescinded or revised).'' [27]

Many commenters drew attention to pending litigation challenging the Fiduciary Rule and PTEs. In this regard, a commenter stated that ''[i]t would be poor process for DOL to allow the remaining requirements . . . to take effect on January 1, 2018, without providing detailed and clear guidance on critical open legal issues generated entirely by the DOL's own regulatory actions. '' [28] Another commenter similarly suggested that ''[a]t the very least, an extension is needed to ensure that the regulation accurately reflects the Department's position in litigation'' regarding the limitation on arbitration.[29]

Regarding the contract and warranty requirements, a significant number of commenters remain divided on these provisions, with many expressing concern about potential negative implications for access to advice and investor costs. Many financial service providers have expressed particular concern about the potential for class litigation and firm liability, and that absent a delay of those provisions, there will be a reduction in advice and services to consumers, particularly those with small accounts who may be most in need of good investment advice.[30] They have suggested that alternative approaches might promote the Department's interest in compliance with fiduciary standards, while minimizing the risk that firms restrict access to valuable advice and products based on liability concerns. These commenters argue that a delay of the applicability date is needed to allow the Department an opportunity to review the RFI responses and develop alternatives to these requirements. For instance, one commenter stated that ''the Department should further delay the January 1, 2018 applicability date of the contract, disclosure and warranty requirements of the BICE, Principal Transactions Exemption, and amendments to PTE 84–24, due to the high level of controversy surrounding the increased liabilities associated with these requirements—particularly when their incremental benefits are weighed against their harm to the retirement savings product marketplace.'' [31]

Based on its review and evaluation of the public comments, the Department is proposing to extend the Transition Period in the BIC Exemption and Principal Transaction Exemption for 18 months until July 1, 2019, and to delay the applicability date of certain amendments to PTE 84–24 for the same period. The same rules and standards in effect now would remain in effect throughout the duration of the extended Transition Period, if adopted. Thus, Financial Institutions and Advisers would have to give prudent advice that is in retirement investors' best interest, charge no more than reasonable compensation, and avoid misleading statements. It is based on the continued adherence to these fundamental protections that the Department, pursuant to 29 U.S.C. 1108, would consider granting the proposed extension until July 1, 2019.[32]

The Department believes a delay may be necessary and appropriate for multiple reasons. To begin with, the Department has not yet completed the reexamination of the Fiduciary Rule and PTEs, as directed by the President on

[24] *See, e.g.,* Comment Letter #229 (Investment Company Institute) (''a delay would result in substantial cost-savings for financial institutions by allow them to avoid the significant and burdensome costs of implementation that will likely ultimately prove unnecessary.''); Comment Letter #251 (Teachers Insurance and Annuity Association of America) (''we are very concerned that continuing to make significant staff and financial investments to satisfy the January 1 applicability date will ultimately prove both a considerable waste of resources and a source of confusion for retirement investors.''); Comment Letter #109 (Securities Industry and Financial Markets Association) (''[d]espite the uncertainties, our members have spent hundreds of millions of dollars thus far; causing them to spend still more without certainty of the ultimate requirements is not responsible.''); *See also* Comment Letter #196 (Prudential Financial), Comment Letter #169 (Madison Avenue Securities), Comment Letter #280 (Guardian Life Insurance Company of America) and Comment Letter #231 (Massachusetts Mutual Life Insurance Company).

[25] Comment Letter #256 (Jackson National Life Insurance Company). *See also* Comment Letter #211 (Transamerica) (pointing to reduced annuity sales).

[26] Comment Letter #18 (T. Rowe Price Associates).

[27] Comment Letter #90 (True Capital Advisors).

[28] Comment Letter #256 (Jackson National Life Insurance Company).

[29] Comment Letter #8 (U.S. Chamber of Commerce).

[30] *See, e.g.,* Comment Letter #293 (SPARK Institute, Inc.) (''[i]n response to the new definition of fiduciary investment advice that became applicable on June 9, 2017, some retirement investors have already been cut off from certain retirement products, offerings, and information. Smaller plans are losing access to information and guidance from their service providers. Also, because of increased litigation risk associated with the [PTEs] provisions set to become applicable on January 1, 2018, this contraction in retirement services will only become worse if the Department fails to delay the upcoming applicability date and materially revise the [Fiduciary Rule and PTEs].''). *See also* Comment Letter #289 (Sorrento Pacific Financial) (''We believe an extension of the Rule's January 1, 2018 applicability date necessary for the Department to thoroughly examine the Rule for adverse impacts on Americans' access to retirement investment advice and assistance, as required by the President's Memorandum. We are deeply concerned that the Rule will cause significant harm to retirement investors by restricting their access to retirement investment advice and services and subjecting firms to meritless litigation due to overly broad definitions contained in the Rule, and so we strongly support the Department in considering a further delay of the Rule and undertaking this examination.'').

[31] Comment Letter #267 (American Council of Life Insurers).

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

February 3, 2017. More time is needed to carefully and thoughtfully review the substantial commentary received in response to the March 2, 2017, solicitation for comments and to honor the President's directive to take a hard look at any potential undue burden. Whether, and to what extent, there will be changes to the Fiduciary Rule and PTEs as a result of this reexamination is unknown until its completion. The examination will help identify any potential alternative exemptions or conditions that could reduce costs and increase benefits to all affected parties, without unduly compromising protections for retirement investors. The Department anticipates that it will have a much clearer image of the range of such alternatives once it carefully reviews the responses to the RFI. The Department also anticipates it will propose in the near future a new and more streamlined class exemption built in large part on recent innovations in the financial services industry. However, neither such a proposal nor any other changes or modifications to the Fiduciary Rule and PTEs, if any, realistically could be implemented by the current January 1, 2018, applicability date. Nor would that timeframe accommodate the Department's desire to coordinate with the SEC in the development of any such proposal or changes. The Chairman of the SEC has recently published a Request for Information seeking input on the ''standards of conduct for investment advisers and broker-dealers,'' and has welcomed the Department's invitation to engage constructively as the Commission moves forward with its examination of the standards of conduct applicable to investment advisers and broker-dealers, and related matters. Absent the proposed delay, however, Financial Institutions and Advisers would feel compelled to ready themselves for the provisions that become applicable on January 1, 2018, despite the possibility of alternatives on the horizon. Accordingly, the proposed delay avoids obligating financial services providers to incur costs to comply with conditions, which may be revised, repealed, or replaced, as well as attendant investor confusion.

Based on the evidence before it at this time while it continues to conduct this examination, the Department is proposing a time-certain delay of 18 months. The Department is also interested in an alternative approach raised by several commenters to the RFI, however—that the Department institute a delay that would end a specified period after a certain action on the part of the Department, *e.g.,* a delay lasting until 12 months after the Department concludes its review as directed by the Presidential Memorandum. The Department is concerned that this type of delay would provide insufficient certainty to Financial Institutions and other market participants who are working to comply with the full range of conditions under the relevant PTEs. Further, the Department is concerned that this type of delay would unnecessarily harm consumers by adding uncertainty and confusion to the market. Nevertheless, the Department requests comments on whether it could structure the delay in a way that could be beneficial to retirement investors and to market participants. If commenters think that such a structure would be beneficial, the Department requests comments regarding what event or action on the part of the Department should begin the period by which the end of the delay is measured (*e.g.,* the end of the Department's examination pursuant to the Presidential Memorandum, issuance of a proposed or final new PTEs or a statement that the Department does not intend any further changes or revisions).

Separately, the Department also requests comments on whether it would be beneficial to adopt a tiered approach. For example, this could be a final rule that delayed the Transition Period until the earlier or the later of (a) a date certain or (b) the end of a period following the occurrence of a defined event. The Department is particularly interested in comments as to whether such a tiered approach would provide sufficient certainty to be beneficial, and how best it could communicate with stakeholders the determination that one date or the other would trigger compliance. The Department is interested in comments that provide insight as to any relative benefits or harms of these three different delay approaches: (1) A delay set for a time certain, including the 18-months proposed by this document, (2) a delay that ends a specified period after the occurrence of a specific event, and (3) a tiered approach where the delay is set for the earlier of or the later of (a) a time certain and (b) the end of a specified period after the occurrence of a specific event.

Finally, several commenters suggested that the Department condition any delay of the Transition Period on the behavior of the entity seeking relief under the Transition Period. These commenters suggested generally that any delay should be conditioned, for example, on a Financial Institution's showing that it has, or a promise that it will, take steps to harness recent innovations in investment products and services, such as ''clean shares.'' Conditions of this type generally seem more relevant in the context of considering the development of additional and more streamlined exemption approaches that take into account recent marketplace innovations and less appropriate and germane in the context of a decision whether to extend the Transition Period. Although this proposal, therefore, does not adopt this approach, the Department solicits comments on this approach, in particular the benefits and costs of this suggestion, and ways in which the Department could ensure the workability of such an approach.

**D. Regulatory Impact Analysis**

The Department expects that this proposed transition period extension would produce benefits that justify associated costs. The proposed extension would avert the possibility of a costly and disorderly transition from the Impartial Conduct Standards to full compliance with the exemption conditions, and thereby reduce some compliance costs. As stated above, the Department currently is engaged in the process of reviewing the Fiduciary Rule and PTEs as directed in the Presidential Memorandum and reviewing comments received in response to the RFI. As part of this process, the Department will determine whether further changes to the Fiduciary Rule and PTEs are necessary. Although many firms have taken steps to ensure that they are meeting their fiduciary obligations and satisfying the Impartial Conduct Standards of the PTEs, they are encountering uncertainty regarding the potential future revision or possible repeal of the Fiduciary Rule and PTEs. Therefore, as reflected in the comments, many financial firms have slowed or halted their efforts to prepare for full compliance with the exemption conditions that currently are scheduled to become applicable on January 1, 2018, because they are concerned about committing resources to comply with PTE conditions that ultimately could be modified or repealed. This proposed applicability date extension will assure stakeholders that they will not be subject to the other exemption conditions in the BIC and the Principal Transaction PTEs until at least July 1, 2019. Of course, the benefits of extending the transition period generally will be proportionately larger for those firms that currently have committed fewer resources to comply with the full exemption conditions. The Department's objective is to complete its review pursuant to the President's Memorandum, analyze comments received in response to the RFI, and propose and finalize any changes to the Rule or PTEs sufficiently before July 1, 2019, to provide firms with sufficient time to design and implement an orderly transition process.

The Department believes that investor losses from the proposed transition period extension could be relatively small. Because the Fiduciary Rule and the Impartial Conduct Standards became applicable on June 9, 2017, the Department believes that firms already have made efforts to adhere to the rule and those standards. Thus, the Department believes that relative to deferring all of the provisions of the Fiduciary Rule and PTEs, a substantial portion of the investor gains predicted in the Department's 2016 regulatory impact analysis of the Fiduciary Rule and PTEs (2016 RIA) would remain intact for the proposed extended transition period.

*1. Executive Order 12866 Statement*

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

a. Investor Gains

The Department's 2016 RIA 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.

With respect to this proposal, the Department considered whether investor losses might result. Beginning on June 9, 2017, Financial Institutions and Advisers generally are 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 they fully adhere to these requirements, the Department expects that affected investors will generally receive a significant portion of the estimated gains. However, because the PTE conditions are 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 and enter into enforceable contracts with IRA investors) the Department acknowledges that the proposed delay of the PTE conditions may result in deferral of some of the estimated investor gains. One RFI commenter suggested that an additional one-year extension of the transition period during which the full PTE conditions would not apply would reduce the incentive for mutual fund companies to market lower-cost and higher-performing funds, which will reduce consumer access to such products, resulting in consumer losses. This commenter argued that in the case of IRA rollovers, the consumer losses from continued conflicted advice and reduced access to more consumer-friendly investment products could compound for decades.

Advisers who presently are ERISA-plan fiduciaries are especially likely to satisfy fully the PTEs' Impartial Conduct Standards before July 1, 2019, because they are subject to ERISA standards of prudence and loyalty and thus would be subject to claims for civil liability under ERISA if they violate their fiduciary obligations or fail to satisfy the Impartial Conduct Standards if they use an exemption. Moreover, fiduciary advisers who do not provide impartial advice as required by the Rule and PTEs in the IRA market would violate the prohibited transaction rules of the Code and become subject to the prohibited transaction excise tax. Even though advisers currently are not specifically required by the terms of these PTEs to notify retirement investors of the Impartial Conduct Standards and to acknowledge their fiduciary status, many investors expect they are entitled to advice that adheres to a fiduciary standard because of the publicity the final rule and PTEs have received from the Department and media, and the Department understands that many advisers notified consumers voluntarily about the imposition of the standard and their adherence to that standard as a best practice.

Comments received by the Department indicate that many financial institutions already have completed or largely completed work to establish policies and procedures necessary to make many of the business structure and practice shifts necessary to support compliance with the Fiduciary Rule and Impartial Conduct Standards (*e.g.,* drafting and implementing training for staff, drafting client correspondence and explanations of revised product and service offerings, negotiating changes to agreements with product manufacturers as part of their approach to compliance with the PTEs, changing employee and agent compensation structures, and designing product offerings that mitigate conflicts of interest). The Department believes that many financial institutions are using this compliance infrastructure to ensure that they currently are meeting the requirements of the Fiduciary Rule and Impartial Conduct Standards, which the Department believes will largely protect the investor gains estimated in the 2016 RIA.[33]

b. Cost Savings

Based on comments received in response to the RFI that are discussed in Section C, above, the Department believes firms that are fiduciaries under the Fiduciary Rule have committed resources to implementing procedures to support compliance with their fiduciary obligations. This may include changing their compensation structures and monitoring the practices and procedures of their advisers to ensure that conflicts of interest do not cause violations of the Fiduciary Rule and Impartial Conduct Standards of the PTEs and maintaining sufficient records to corroborate that they are complying with the Fiduciary Rule and PTEs. These firms have considerable flexibility to choose precisely how they will achieve compliance with the PTEs during the proposed extended transition period. The Department does not have sufficient data to estimate such costs; therefore, they are not quantified.

Some commenters have asserted that the proposed transition period extension could result in cost savings for firms compared to the costs that were estimated in the Department's 2016 RIA to the extent that the requirements of the Fiduciary Rule and PTE conditions are modified in a way that would result in less expensive compliance costs. However, the Department generally believes that start-up costs not yet incurred for requirements now scheduled to become applicable on January 1, 2018, should not be included, at this time, as a cost savings associated with this proposal because the proposal would merely delay the full implementation of certain conditions in the PTEs until July 1, 2019, while the Department considers whether to propose changes and alternatives to the exemptions. The Department would be required to assume for purposes of this regulatory

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

impact analysis that those start-up costs that have not been incurred generally would be delayed rather than avoided unless or until the Department acts to modify the compliance obligations of firms and advisers to make them more efficient. Nonetheless, even based on that assumption, there may be some cost savings that could be quantified as arising from the delay being proposed in this document because some ongoing costs would not be incurred until July 1, 2019. The Department has taken two approaches to quantifying the savings resulting from the delay in incurring ongoing costs: (1) Quantifying the costs based on a shift in the time horizon of the costs (*i.e.,* comparing the present value of the costs of complying over a ten year period beginning on January 1, 2018 with the costs of complying, instead, over a ten year period beginning on July 1, 2019); and (2) quantifying the reduced costs during the 18 month period of delay from January 1, 2018 to July 1, 2019, during which regulated parties would otherwise have had to comply with the full conditions of the BIC Exemption and Principal Transaction Exemption but for the delay.

The first of the two approaches reflects the time value of money (*i.e.,* the idea that money available at the present time is worth more than the same amount of money in the future, because that money can earn interest). The deferral of ongoing costs by 18 months will allow the regulated community to use money they would have spent on ongoing compliance costs for other purposes during that time period. The Department estimates that the ten-year present value of the cost savings arising from this 18 month deferral of ongoing compliance costs, and the regulated community's resulting ability to use the money for other purposes is $551.6 million using a three percent discount rate [34] and $1.0 billion using a seven percent discount rate.[35]

The second of the two approaches simply estimates the expenses foregone during the period from January 1, 2018 to July 1, 2019 as a result of the delay. When the Department published the 2016 Final Rule and accompanying PTEs, it calculated that the total ongoing compliance costs of the rule and PTEs were $1.5 billion annually. Therefore, the Department estimates the ten-year present value of the cost savings of firms not being required to incur ongoing compliance costs during an 18 month delay would be approximately $2.2 billion using a three percent discount rate [36] and $2.0 billion using a seven percent discount rate.[37] [38]

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

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

c. Alternatives Considered

While the Department considered several alternatives that were informed by public comments, this proposal likely would yield the most desirable outcome including avoidance of costly market disruptions and 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.

The Department considered not proposing any extension of the transition period, which would mean that the remaining conditions in the PTEs would become applicable on January 1, 2018. The Department is not pursuing this alternative, however, because it would not provide sufficient time for the Department to complete its ongoing review of, or propose and finalize any changes to the Fiduciary Rule and PTEs. Moreover, absent the proposed extension of the transition period, Financial Institutions and Advisers would feel compelled to prepare for full compliance with PTE conditions that become applicable on January 1, 2018, the applicability date of the additional PTE conditions despite the possibility that the Department could adopt more efficient alternatives. This could lead to unnecessary compliance costs and market disruptions. As compared to a shorter delay with the possibility of consecutive additional delays, if needed, this proposal would provide more certainty for affected stakeholders because it sets a firm date for full compliance, which would allow for proper planning and reliance. The Department's objective would be to complete its review of the Fiduciary Rule and PTEs pursuant to the President's Memorandum and the RFI responses sufficiently in advance of July 1, 2019, to provide firms with enough time to prepare for whatever action is prompted by the review. As discussed above, the Department believes that investor losses associated with this proposed extension would be relatively small. The fact that the Fiduciary Rule and the Impartial Conduct Standards are now in effect makes it likely that retirement investors will experience much of the potential 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 PTE conditions as discussed in the 2016 Regulatory Impact Analysis.

2. Paperwork Reduction Act

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

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

[34] Annualized to $64.7 million per year.

[35] Annualized to $143.9 million per year.

[36] Annualized to $252.1 million per year.

[37] Annualized to $291.1 million per year.

[38] The Department notes that firms may be incurring some costs to comply with the impartial conduct standards; however, it has no data to enable it to estimate these costs. The Department solicits comments on the costs of complying with the impartial conduct standards, and how these costs interact with the costs of all other facets of compliance with the conditions of the PTEs.

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

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

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

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

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

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

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

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

*Agency:* Employee Benefits Security Administration, Department of Labor.

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

*OMB Control Number:* 1210–0156.

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

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

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

*Frequency of Response:* When engaging in exempted transaction.

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

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

*Agency:* Employee Benefits Security Administration, Department of Labor.

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

*OMB Control Number:* 1210–0157.

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

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

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

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

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

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

*Agency:* Employee Benefits Security Administration, Department of Labor.

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

*OMB Control Number:* 1210–0158.

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

*Estimated Number of Respondents:* 21,940.

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

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

*Estimated Total Annual Burden Hours:* 172,301 hours.

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

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal Rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other laws. Unless the head of an agency certifies that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis (IRFA) 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.

This proposal merely extends the transition period for the PTEs associated with the Department's 2016 Final Fiduciary Rule. Accordingly, pursuant to section 605(b) of the RFA, the Deputy Assistant Secretary of the Employee Benefits Security Administration hereby certifies that the proposal will not have a significant economic impact on a substantial number of small entities.

*4. Congressional Review Act*

This proposal 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 if finalized. The proposal is a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is likely to result in an annual effect on the economy of $100 million or more.

*5. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this proposal 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 proposed delay will have any material economic impacts on State, local or tribal governments, or on health, safety, or the natural environment.

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

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.

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

**E. List of Proposed Amendments to Prohibited Transaction Exemptions**

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

Under this authority, and based on the reasons set forth above, the Department is proposing to amend the: (1) Best Interest Contract Exemption (PTE 2016–01); (2) Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016–02); and (3) Prohibited Transaction Exemption 84–24 (PTE 84–24) for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters, as set forth below. These amendments would be effective on the date of publication in the **Federal Register** of final amendments or January 1, 2018, whichever is earlier.

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

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

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

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

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

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

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

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

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

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

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

Signed at Washington, DC, this 28th day of August 2017.

**Timothy D. Hauser,**

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

[FR Doc. 2017–18520 Filed 8–30–17; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2016–0397; FRL–9967–19–Region 5]**

### Air Plan Approval; Illinois; Rule Part 225, Control of Emissions From Large Combustion Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Illinois state implementation plan (SIP) to amend requirements applicable to certain coal-fired electric generating units (EGUs). These amendments require the Will County 3 and Joliet 6, 7, and 8 EGUs to permanently cease combusting coal; allow other subject EGUs to cease combusting coal as an alternative means of compliance with mercury emission standards; exempt the Will County 4 EGU from sulfur dioxide ($SO_2$) control technology requirements; require all subject EGUs to comply with a group annual nitrogen oxide ($NO_X$) emission rate; and require only those subject EGUs that combust coal to comply with a group annual $SO_2$ emission rate.

**DATES:** Comments must be received on or before October 2, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0397 at *http://www.regulations.gov* or via email to *blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Charles Hatten, Environmental Engineer, Control Strategy Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:



## I. Background

On June 24, 2011, Illinois EPA submitted to EPA state rules to address the visibility protection requirements of Section 169A of the Clean Air Act (CAA) and the regional haze rule, as codified in 40 CFR 51.308. This submission included the following provisions contained in Title 35 of the Illinois Administrative Code (IAC), Part 225 (Part 225): sections 225.291, 225.292, 225.293, 225.295 and 225.296 (except for 225.296(d)), and Appendix A to Part 225. On July 6, 2012, EPA approved these provisions (77 FR 39943).

On June 23, 2016, Illinois submitted revisions to these rules and on January 9, 2017, Illinois submitted additional information explaining the revisions.[1] These rules are known as the ''Combined Pollutant Standard,'' and are codified at 35 IAC Part 225, Subpart B, titled ''Control of Emissions from Large Combustion Sources'' (CPS or Part 225 rules). The CPS provides certain EGUs an alternative means of compliance with the mercury emission standards in 35 IAC 225.230(a).[2] The CPS applies to EGUs at six power plants, which are identified in Appendix A to the CPS. Illinois is revising the CPS to address the conversion of certain EGUs to fuel other than coal.

## II. Discussion of the State's Submittal

### *A. Rule Revisions That EPA Is Proposing To Approve*

EPA is proposing to approve the following revisions as part of Illinois' SIP:

Section 225.291 Combined Pollutant Standard: Purpose

SIP Section 225.291 sets forth the purpose of the CPS, which is to allow an alternate means of compliance with the emissions standards for mercury in 35 IAC 225.230(a) for specified EGUs through permanent shutdown, the installation of an activated carbon injection system, or the application of pollution control technology for $NO_X$, $SO_2$, and particulate matter (PM) emissions that also reduce mercury emissions as a co-benefit.

Illinois revised section 225.291 by stating as its purpose the conversion of an EGU to a fuel other than coal (such as natural gas or distillate fuel oil with sulfur content no greater than 15 parts per million (ppm)) as an additional alternative means of compliance with the mercury emission standards under the CPS.

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[1] Illinois' final rule amended other state regulations, Parts 214 (Sulfur limitations), and Part 217(Nitrogen oxide emissions), and other portions of Part 225, that are not part of the Illinois SIP, and were not submitted to EPA as part of this action. Illinois stated in its statement of reasons for the final rule that these revisions are proposed to control emissions of sulfur dioxide ($SO_2$) in and around areas designated as nonattainment with respect to the 2010 National Ambient Air Quality Standard (NAAQS), and are intended to aid Illinois' attainment planning efforts for the 2010 $SO_2$ NAAQS.

[2] 35 IAC 225.230 contains Illinois' mercury emission standards for EGUs, and is not part of the federally enforceable SIP.