

September 15, 2017

The Office of Exemption Determination
Employee Benefits Security Administration
Attention: D-11712, 11713, 11850
Suite 400
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Ladies & Gentlemen:

The Investment Program Association (“IPA”) submits the following comments with respect to the notice of proposed amendments to PTE 2016-01, PTE 2016-02 and PTE 84-24, published by the U.S. Department of Labor (the “Department”) on August 31, 2017. These comments specifically relate to the proposal to extend the special transition period from January 1, 2018 to July 1, 2019, 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. Our comments also relate to the proposal to delay the applicability of certain amendments to Prohibited Transaction Exemption 84-24 for the same period. The IPA appreciates the opportunity to comment on this important regulatory action.

The IPA was formed in 1985 to provide effective national leadership for the Portfolio Diversifying Investment (“PDI”) industry. The IPA supports individual investor access to a variety of asset classes with low correlation to the traded markets¹ that have been historically available only to institutional investors, including: Lifecycle Real Estate Investment Trusts, Lifecycle Business Development Companies, interval funds, energy and equipment leasing programs, and numerous types of private equity offerings. For over 30 years the IPA has successfully championed the growth and improvement of alternative direct investments, which have increased in popularity with financial professionals and investors alike. To date, PDI products have been held in more than three million individual investor accounts. They are a critical component of an effectively balanced investment portfolio and serve an essential capital formation function for the U.S. economy. The mission of the IPA is to advocate for PDI products through education and public awareness.

The IPA firmly supports the extension of the January 1, 2018 deadline for the reasons set forth below. The IPA believes this will allow the industry sufficient time to fully comply with the Department of Labor’s Fiduciary Rule requirements and to allow both the Department and the Securities and Exchange Commission (“SEC”) to fully understand how the implementation thus far has influenced the investment industry. This additional time will allow both the Department and the SEC to more specifically tailor further implementation to meet the realities of the investment industry.

¹ Asset classes that are not correlated to the traded markets generally do not move in parallel with the traded markets. This results in a type of diversification that assists in reducing the portfolio risk that results from traded market volatility.



The IPA believes this delay will not harm retirement investors while allowing the industry to adapt to the Rule more effectively. First, the IPA believes that between the portions of the Rule that were effective in July and the rules that the SEC and other regulatory authorities have in place, the main goals of the Rule have been achieved.² Parties regulated by the Rule, including many IPA member organizations, must now comply with the Impartial Conduct Standards that are part of the Best Interest Contract Exemption (“BIC”). These standards are the heart of the Rule and the BIC and ensure that the regulated entities treat retirement investors in a manner that reflects those investors’ best interests without regard to the interest of the investment advisor. The IPA believes this to be the case regardless of the rule. The delay of the implementation of the more formalistic portions of the Rule and the BIC would not serve as an impediment to providing these protections to retirement investors.

Second, the Department should delay the implementation of the remainder of the Rule and the BIC in order to allow renewed coordination with the SEC. As you know, the substantive Request for Information (“RFI”), specifically RFI 11 request information from the public regarding the current regulatory scheme provided by the SEC and other agencies. Similarly, the SEC has recently indicated renewed interest in the regulatory framework governing investment advice and has invited comments that address certain aspects of the Rule and the BIC.³ It would benefit both agencies, as well as the industry and more importantly investors, if more time were provided to attempt to reconcile the positions of both agencies, as well as our industry, in order to most efficiently protect retirement investors. A piecemeal approach would certainly result in not just significant costs to the regulated entities, but would undoubtedly lead to retirement investor confusion with an ever-shifting landscape, increased investor costs and orphaned investors.

Third, given the fact that the Department is undertaking an examination of the Rule, including a continuing analysis of comments it received in response to the March 2, 2017 request for comments responding to the Presidential Memorandum published February 7, 2017 and its forthcoming review of responses to the July 6, 2017 RFIs that are not due until August 5, 2017, a delay makes sense. Since it appears reasonable to expect that the information received as a result of both the March 2 and July 6 requests and current research by the U.S. Chamber of Commerce, the Financial Services Institute (in which the IPA participated), the Financial Services Round Table, as well as others, clearly demonstrates that the initial analysis was flawed, we believe the “real world” impact to the “main street” investor is significant. An analysis of the real impacts of this Rule will change some portion of the current Rule, and since it seems highly unlikely that the Department will be able to complete the analysis of those comments or analysis and issue any resulting guidance before the January 1, 2018 applicability date, the most advantageous course of action for both investors and advisors would be to delay the applicability date until the Department has had sufficient time to address all requested comments. This would be far preferable to an approach where provisions that become applicable on January 1, 2018 are ultimately revoked in relatively short order, causing both confusion for investors and added compliance costs for the industry (which in turn may lead to additional costs for investors).

² See 82 Fed Reg. 16903, 16905 (April 7, 2017)

³ See <https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31>



The IPA does not believe that there is any material risk to delaying the applicability date of the provisions of the BIC scheduled to become applicable on January 1, 2018. This delay would be advantageous to advisors and have no discernible negative effect on retirement investors, who are already protected by the key parts of the Rule. It is hard to envision any real costs to the delay, while the benefits would include a revised policy taking into account new information and real world impacts of the rule both in actual costs and available services and advise to investors.

We appreciate your consideration of our comments and are willing to answer any questions you may have.

Sincerely,



Anthony Chereso
President & CEO, Investment Program Association