

September 23, 2021

Via E-Mail

The Honorable Ali S. Khawar
Acting Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Extension of Enforcement Policy Under FAB 2018-02

Dear Acting Assistant Secretary Khawar:

The Investment Adviser Association (**IAA**)¹ appreciates our discussions with you and members of the staff of the Employee Benefits Security Administration (**EBSA**) on issues related to PTE 2020-02, *Improving Investment Advice for Workers & Retirees (PTE 2020-02)*.² In the preamble to PTE 2020-02, the Department states that the enforcement policy under Field Assistance Bulletin (**FAB**) 2018-02 will expire on December 20, 2021. We are writing to ask the Department to extend that date for at least six months or until the Department has taken further regulatory or sub-regulatory action in this area.

The IAA strongly supports the goal of ensuring that clients receive investment advice that is in their best interest. Our members are diligently working to comply with the terms of PTE 2020-02, but would benefit from additional time to fully implement certain requirements. Advisers are reviewing their processes, and in some cases are updating internal systems or using products from third-party vendors. Evaluating, selecting, testing, and implementing new technology, and updating related processes, policies, and procedures takes a significant amount of time under typical circumstances, and with COVID-19 these tasks are far more challenging and time consuming. We believe that additional time will allow our members to better serve investors by allowing them to carefully implement updated processes, policies, and procedures to comply with the exemption.

¹ The IAA is the leading organization dedicated to advancing the interests of investment advisers. For more than 80 years, the IAA has been advocating for advisers before Congress and U.S. and global regulators, promoting best practices and providing education and resources to empower advisers to effectively serve their clients, the capital markets, and the U.S. economy. The IAA's member firms manage more than \$25 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information, please visit www.investmentadviser.org.

² *Prohibited Transaction Exemption 2020-02, Improving Investment Advice for Workers & Retirees*, 85 FR 82798 (Dec. 18, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-12-18/pdf/2020-27825.pdf>.

We also note that the Department stated in frequently asked questions that it issued related to PTE 2020-02 that it “anticipates taking further regulatory and sub-regulatory actions, as appropriate, including amending the investment advice fiduciary regulation, amending PTE 2020-02, and amending or revoking some of the other existing class exemptions available to investment advice fiduciaries.”³ While we do not believe it may be necessary for the Department to take further action, if it plans to take any additional action, we believe it is appropriate to extend the enforcement policy in FAB 2018-02 in the interim so that firms will have regulatory certainty with respect to implementation of any new requirements.

Accordingly, we respectfully request that the Department either extend the enforcement policy until it has completed any additional regulatory and sub-regulatory action in this area or, at a minimum, for at least six months beyond the current expiration date.

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We appreciate your consideration of our request and would be happy to provide any additional information that may be helpful. Please contact Sarah Buescher, IAA Associate General Counsel, or the undersigned at (202) 293-4222 if we can be of further assistance.

Respectfully Submitted,

/s/ Gail C. Bernstein

Gail C. Bernstein
General Counsel

³ *New Fiduciary Advice Exemption: PTE 2020-02 Improving Investment Advice for Workers & Retirees Frequently Asked Questions* (April 2021), available at <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/new-fiduciary-advice-exemption>.