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JOHN L. CARTER
President and Chief Operating Officer
NATIONWIDE FINANCIAL SERVICES, INC.
One Nationwide Plaza, 1-37-18
Columbus, OH 43215

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Submitted electronically via www.regulations.gov

Office of Regulations and Interpretations
Office of Determinations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington DC 20210

RE: RIN 1210-AC02 – Definition of Fiduciary
Application No. D-12057 – Proposed Amendment PTE 2020-02
Application No. D-12060 – Proposed Amendment to PTE 84-24
Application No. D-12094 – Proposed Amendments to PTE 75-1, 77-4, 80-83, 83-1, 86-128

On behalf of Nationwide Financial Services, Inc. ("Nationwide")[1], we welcome the opportunity to provide comment with respect to the Department of Labor's ("Department") proposed Retirement Security Rule and amendments to prohibited transaction exemptions ("PTEs") (collectively, the "Proposal"). This letter contains comments on the proposed definition of fiduciary as well as the changes to existing PTEs and the significant impact these proposed changes would have on retirement savers.

NATIONWIDE

At our core, Nationwide is a protection company with a clear mission "To Protect People, Businesses and Futures with Extraordinary Care." Our goal is to be the best protection company

[1] Nationwide Financial Services, Inc. (NFS) is the holding company for Nationwide Life Insurance Company and other companies that comprise the domestic life insurance and retirement savings operations of the Nationwide group of companies. NFS's core business segments are annuities, life insurance, retirement savings plans (including 401(k), 457, 401(a), and 403(b) plans), collective investment trusts, mutual funds, and exchanged traded funds.

because what we value most is our customers. Through its main financial services business segments and subsidiaries, Nationwide services over 3.6 million retail investors through variable annuities, variable life insurance, mutual funds, and retirement plan accounts. Over 2.7 million Nationwide customers are retirement plan participants.

THE PROPOSAL

Nationwide respects the charge of the Department which calls for overseeing and protecting retirement investors in qualified retirement savings plans. With its Proposal the Department declares that it seeks to eliminate what it perceives to be gaps in protections for retirement investors. However, what the Department has proposed will instead introduce new gaping holes for retirement investors as they navigate their increasingly independent journey to prepare for and live in retirement.

The Department's Proposal appears to dismiss the judicial authority of the 5th Circuit and its decision to vacate the 2016 Proposal as the court's decision specifically called out several problems with that Proposal that have been included, and in some instances enhanced, in this Proposal. Like its 2016 predecessor, the current Proposal stretches well beyond the bounds of ERISA in its attempt to expand the breadth of retirement savers under the Department's purview while simultaneously limiting their access to retirement products and advice that is not under the control of the Department. The Department's clear intention to target and even eliminate roll-overs has again stepped into the jurisdictional territory of Treasury, IRS, and State Insurance Commissioners, all without Congressional direction.

The Department's denial of requests to extend the 60-day comment period and to reschedule the public hearings to a date following the end of the comment period, as is standard practice strongly suggests that the Department is uninterested in substantive feedback from stakeholders. The Proposal's inclusion of an implementation schedule of 60-days following the final rule's publication in the Federal Register is entirely unrealistic. It is another example of the Department's inexplicable stance regarding both what is legally permissible and reasonably practicable.

We believe the Department's extrajudicial Proposal presents profoundly adverse implications for our diverse customer base. The Proposal will create added complexity, confusion, cost, and will serve retirement investors only in the form of further limiting their access to information, guidance, and support on market investments, protection products, planning tools, and accumulation and decumulation investment strategies. For these reasons, Nationwide urges the Department to withdraw and permanently abandon this proposal.

IMPACT ON NATIONWIDE CUSTOMERS

In redefining the ERISA definition of fiduciary, the Department will have effectively prohibited companies like Nationwide from offering necessary and desired support to plan sponsors, participants, and IRA owners. Simple, yet critical, resources such as internal call centers, digital engagement tools, proactive participant communications and educational materials, and websites could be substantially curtailed, rendering them less effective, for fear of being deemed sources of fiduciary investment advice.

For example, call center representatives for insurance companies, recordkeepers and broker dealers would need to follow tightly controlled scripts when engaged by a plan participant or

IRA owner seeking answers to questions concerning their employer's plan or IRA, available savings and investment alternatives, and options to access their account values. In our experience, a retirement investor's first and often only point of contact is with a call center. This is especially true during times of need, personal crisis, or market disruption. The true impact of the Proposal would be reducing these interactions to an exercise of sharing factual, bare minimum and one-dimensional information resulting in the retirement investor being left to either fend for themselves or take on additional cost to hire an investment advice provider for further assistance.

In recent years, Congress has provided clear and explicit direction to the Department through overwhelming bipartisan support of the 2019 SECURE Act and the 2022 SECURE 2.0 Acts. Both laws demonstrate that our elected lawmakers want consumers to enjoy increased access to retirement plans, financial professionals, and lifetime income products. The Department has once again embarked on a rulemaking opposing these directives as the Proposal will prove to only further limit access, restrict personalized financial advice and disallow any consideration of all but the most basic investment products. This paternalistic view of retirement investors is incompatible with the reality of today's system which places all decision-making with the individual retirement saver.

At the same time this Proposal isolates savers from the most routine and necessary tools they need to make those decisions. The new definition of fiduciary coupled with the drastic, overreaching, and unnecessary changes to the Department's PTEs will have a similar paralyzing effect on our distribution partners. Main street investors rely on companies like Nationwide and its distribution partners to help navigate what continues to be an increasingly independent path towards preparing for and living in retirement. This Proposal will be a detriment to all retirement investors by limiting market access, creating untold confusion and complexity, eroding investor confidence, and transferring cost of compliance that will harm retirement investors.

Our concerns with the Proposal and its chilling impact on retirement savers are not theoretical or speculative. While the 2016 rule was effective, financial services firms uniformly restricted access to personalized investment advice to all but the wealthiest savers in an effort to comply with the excessively restrictive and overreaching requirements of the rule. Low- and middle-income savers were relegated to second tier status with limited access to meaningful support, education, and guidance. Any claims by the Department that its most recent Proposal helps retirement savers appears to be disingenuous as its current Proposal is effectively a repackaged version of its 2016 Proposal.

Nationwide is aware that its viewpoints are shared by many other entities including state regulators, industry trade associations, and advocacy organizations. In submitting this letter, Nationwide formally voices its concerns on behalf of its customers, as well as its support of comment letters submitted by the following organizations, the collection of which most effectively and more specifically capture Nationwide's position and concerns with the Department's Proposal:

- The American Benefits Council
- The American Council of Life Insurers
- The Committee of Annuity Insurers
- The Hispanic Leadership Fund
- The Investment Company Institute
- The Insured Retirement Institute
- The Insurance Coalition
- The National Association for Fixed Annuities
- The National Association of Insurance Commissioners
- National Association of Insurance and Financial Advisors
- SIFMA
- The SPARK Institute
- The U.S. Chamber of Commerce

We thank the Department for its consideration of our views and strongly encourage the withdrawal of this Proposal. Please contact Annie Webb in our Government Relations Department at 202-347-5913 or via email at webba15@nationwide.com for any follow-up questions you may have.

Sincerely,

John L. Carter
President and Chief Operating Officer
Nationwide Financial Services, Inc.

One Nationwide Plaza
Columbus, Ohio 43215