T. Rowe Price
INVEST WITH CONFIDENCE

January 2, 2024

Filed electronically via Federal eRulemaking Portal: https://www.regulations.gov

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

Re: Retirement Security Rule: Definition of an Investment Advice Fiduciary
RIN 1210–AC02, Docket No. 2023-23779
Proposed Amendment to Class Exemption PTE 2020–02
Docket No. 2023-23780

Dear Sir or Madam:

T. Rowe Price appreciates the opportunity to comment on the Notice of Proposed Rulemaking, the Retirement Security Rule: Definition of an Investment Advice Fiduciary (the "Proposed Rule")[1] and accompanying amendments to several prohibited transaction exemptions (including PTE 2020-02)[2] applicable to fiduciaries under the Employee Retirement Income Security Act of 1974 ("ERISA"). Together, this rulemaking, issued by the U.S. Department of Labor (the "Department"), would establish new criteria to determine which conduct will be deemed to constitute investment advice for purposes of determining fiduciary status under ERISA.

T. Rowe Price Background

Founded in 1937, Baltimore-based T. Rowe Price Group, Inc. is a global investment management organization with $1.39 trillion in assets under management as of November 30, 2023. The organization provides a broad array of mutual funds, common trust funds, exchange-traded funds, subadvisory services, and separate account management for individual and institutional investors, retirement plans, and financial intermediaries. T. Rowe Price Associates, Inc. ("TRPA") and T. Rowe Price Investment Management, Inc. ("TRPIM") serve as investment advisers to the T. Rowe Price family of mutual funds ("Price Mutual Funds"), collective trusts maintained by its affiliate, T. Rowe Price Trust Company, and numerous separate account clients. Price Mutual Funds are distributed by T. Rowe Price Investment Services, Inc. ("TRPIS"), a registered broker-dealer. Through TRPIS, our Individual Investors ("II") business line serves over 700,000 IRA account holders, the majority of whom benefit from the retirement education and tools we supply. T. Rowe Price Retirement Plan Services, Inc. ("TRP RPS") provides recordkeeping services to plans that are sponsored by organizations of all sizes and helps them manage their retirement plans through administrative services, employee tools and guidance, and retirement expertise.

Retirement saving is extremely important to T. Rowe Price and our clients. We are a top provider of target date funds and the largest provider of actively managed target date funds and serve approximately 7,600 retirement plans and 2.3 million participants. Approximately two-thirds of our assets under management are related to retirement savings.

[1] 88 Fed. Reg. 75890 (November 3, 2023).

[2] 88 Fed. Reg. 75979 (November 3, 2023).

T. Rowe Price Associates
troweprice.com
T: 410-345-2000
T: 800-638-7890

100 East Pratt Street
Baltimore, MD 21202-1009

PO Box 89000
Baltimore, MD 21289-0316

As one of the top five providers of target date funds, we are particularly proud of the role that our target date suite of investment products has played in helping retirement savers[3] achieve appropriate diversification at reasonable cost. In fact, target date funds and other asset allocation investments have been one of the great success stories in modern finance—a collaboration between plan sponsors, plan advisers, investment managers, and the government to bring modern portfolio theory to retirement savers in an easy-to-understand package.

We count among our clients retirement plans of all sizes, from some of the largest in America to small business retirement plans with only a handful of participants, and individuals who invest through IRAs. We believe that retirement plan clients and individual IRA investors serviced by T. Rowe Price have found benefit in T. Rowe Price's quality investment management, promotion of effective plan design, and dedication to assisting individual retirement savers.

Overview of Comments

We appreciate the importance of positioning retirement savers for success in meeting the responsibility that our private retirement savings system imposes on them. Our country's retirement system depends in large part on a solid foundation of employer-sponsored plans and private savings, and we share the Department's dedication to making sure that retirement savers, as well as retirement plan fiduciaries, have access to quality investment guidance and advice. The standard the Department seeks to promote—one which requires putting clients' interests first—is entirely consistent with T. Rowe Price's longstanding core values; we believe it is both right for retirement savers and fundamental to T. Rowe Price's mission in assisting them.

Fiduciary obligations under ERISA apply to T. Rowe Price in various ways, so we understand the full weight and import of the statute and fiduciary status. As such, we understand the Department's commitment to ensuring that the ERISA fiduciary obligation remains the highest in the land.[4] However, we are concerned that the Proposed Rule and related exemptions create a number of unnecessary burdens and complications that could negatively impact retirement security without providing any meaningfully increased fiduciary protection, and the broad expansion of the Department's longstanding definition of fiduciary investment advice will disrupt the education and assistance currently provided to retirement savers and plan fiduciaries. As explained more fully in the remainder of this letter, our concerns include that:

- The proposed definition of an investment advice fiduciary is overly broad;
- Several of the proposed amendments to PTE 2020-02 could be problematic, including the proposal for public website disclosure, the proposed amendments to the eligibility provisions, and the proposed required disclosure to additional parties;
- The Proposed Rule and the related exemptions do not respond to concerns raised by the Fifth Circuit when it vacated the fiduciary rule finalized in 2016 ("2016 Rule");
- The economic analysis of the rulemaking package is insufficient, significantly underestimates the amount of time required to address the Proposed Rule and related exemptions, and requires further consideration;
- The comment period is insufficient to provide a full and comprehensive analysis; and

[3] Throughout this letter, we use the term "retirement savers" to refer to both plan participants and IRA investors.

[4] *See* 88 Fed. Reg. at 75900 citing *Donovan* v. *Bierwirth,* 680 F.2d 263, 272 n. 8 (2d. Cir. 1982), *cert denied,* 459 U.S. 1069 (1982).

- The proposed effective date would not provide sufficient time for implementation of a final rule.

Of these, our primary concern is that the Proposed Rule creates an overly broad definition of an investment advice fiduciary which, if implemented, would confer fiduciary status in many circumstances that do not create an expectation of a relationship of trust and confidence, are permissible today without complex conditions, and are helpful to retirement savers. In this context we are specifically concerned about common interactions with retirement savers; sales activities, including responses to requests for proposal ("RFPs"); and interactions with plan fiduciaries and advisers. The Proposed Rule could also increase litigation risks. As such, the Proposed Rule could have the unintended effect of limiting interactions with and information, including education, provided to retirement savers and plan fiduciaries.

Comments

The Proposed Definition of an Investment Advice Fiduciary is Overly Broad. Even though the Department has highlighted the differences in the Proposed Rule from the 2016 Rule,[5] we respectively point out that many similarities remain and that the general spirit of the Proposed Rule is very similar to the 2016 Rule. As such, many of our concerns with the 2016 Rule remain with the Proposed Rule. Specifically, the proposed expanded definition of fiduciary is similarly over-broad to the 2016 Rule and sweeps in conversations and situations that do not rise to a reasonable expectation of a relationship of trust and confidence.

In our comment letter on what would become the 2016 Rule, we noted:

> The functional definition of a fiduciary should be crafted with recognition of the important duties imposed on ERISA fiduciaries—most importantly the requirement to act with "an eye single" to the interests of the participants and beneficiaries of the plan.[6] Where circumstances, viewed objectively, create expectations that the person providing an investment recommendation will act in accordance with that high standard, it is appropriate to include those circumstances in the functions that will give rise to ERISA fiduciary status. Unfortunately, the Proposal goes too far and encompasses circumstances where there is no reasonable expectation of fiduciary trust and confidence.[7]

In that letter, we went on to express concerns about common interactions with retirement savers, sales conversations, including responses to RFPs, and interactions with plan fiduciaries and advisers. We reiterate those concerns with the Proposed Rule.

1. Common Interactions with Retirement Savers

Proposed paragraph (c)(1)(ii) changes the "regular basis" prong of the current five-part test to apply to advice rendered by a person who makes investment recommendations to investors "on a regular basis as part of their business." This proposed change would result in fiduciary status that did not previously exist for common

[5] Department of Labor Public Comment Hearing on Retirement Security Rule: Definition of an Investment Advice Fiduciary and Associated Prohibited Transaction Exemption Amendments, Dec. 12, 2023, Opening Remarks by Assistant Secretary Lisa M. Gomez, Unofficial transcript pp 9-11 at https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/transcript/proposed-retirement-security-rule-hearing-day1.pdf.

[6] *See* Pegram v. Herdrich, 530 U.S. 211, 235 (2000) (quoting Donovan v. Bierwirth, 680 F.2d 263, 271 (2d Cir. 1982)).

[7] T. Rowe Price comment letter in response to Department of Labor Notice of Proposed Rulemaking related to Definition of the Term "Fiduciary"; Conflict of Interest Rule - Retirement Investment Advice and related exemptions, July 21, 2015 (Corrected July 23, 2015) at https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00661.pdf.

interactions with retirement savers. Even though the preamble states that the proposal avoids concerns that the rule could sweep so broadly as to cover car dealers or human resources employees,[8] it does not avoid sweeping in common interactions with companies, such as T. Rowe Price, that provide recommendations as a regular part of one area of its business while non-discretionary savings and investment education services are provided in another. For example, TRP RPS provides non-fiduciary recordkeeping services to retirement plan sponsors and participants. The Proposed Rule would create an artificial distinction based on the fact that an affiliate provides recommendations outside of the services provided to recordkeeping clients.

As we describe further below, under the Proposed Rule, the Department creates a lower standard for firms in this scenario by omitting a condition that the services of the non-fiduciary affiliate must also involve a recommendation that is based on the particular needs or individual circumstances of the retirement saver. As proposed, the standard would be met solely by virtue of having an affiliate with discretionary authority or control of plan assets even though there was no expectation of the parties to create a fiduciary relationship. This is just one example of our overarching point—that fiduciary status should depend, in part, upon whether there is a reasonable expectation of such status. As detailed below, there are several prongs of T. Rowe Price's business that could be impacted.

Through the years, we have focused on making retirement saving easier by providing investor education about savings goals, retirement income needs, and investment principles. We see this type of guidance as critically important to provide retirement savers with information that can help them achieve better retirement outcomes, and we are concerned that including them under the definition of fiduciary advice could provide a disincentive that would do more harm than good. One example is the Retire with Confidence® Program for participants in plans recordkept by TRP RPS.[9] Through a participant engagement model that includes employee meetings, targeted mailings and one-on-one consultations, we provide information about savings and investment behaviors that improve retirement outcomes as well as information that is appropriate to the retirement saver's life stage—from savings goals and asset allocation principles for beginning savers to approaches to retirement income for those beginning to draw down benefits. All discussions, including one-on-one consultations, are conducted by salaried (non-commissioned) associates.

Below are examples of other TRP RPS interactions with plan participants, in addition to the Retire with Confidence® Program, that could possibly be treated as a fiduciary interaction under the Proposed Rule. We see no reasonable basis or justification for recharacterizing these activities from education to fiduciary investment advice. We encourage the Department to clarify that these types of interactions do not fall under the proposed definition of fiduciary investment advice.

- *Encouraging Enrollment and Savings* – Promoting the benefits of enrolling and saving in a retirement plan and encouraging participants to save at a rate that maximizes any corporate match or at a rate that will result in a "rule of thumb" target savings rate such as 15 percent.

- *Encouraging Diversification* – Educating participants about the merits of investment diversification. This includes targeted campaigns to individuals about the need to diversify beyond a money market fund or common stock fund, among others.

- *Distribution Education* – Educating terminated participants about their distribution options, including staying in the plan, rolling over to their new employer's plan, rolling over to an IRA, and cashing out. These materials and interactions generally encourage participants to keep their savings tax-deferred and discourage cashing out. These materials may also promote the benefits of the plan as a rollover

[8] 88 Fed. Reg. at 75902.

[9] https://www.troweprice.com/content/dam/retirement-plan-services/pdfs/our-advantage/Retire_With_Confidence_Program_Overview.pdf.

destination or promote the services available to terminated participants who wish to stay in the plan (e.g., products and services offered by the plan that are geared towards retirees).

- *Education about Plan Products and Services* – Educating participants about the availability and benefits of products and services offered by the plan, such as asset allocation funds, including retirement date funds, and managed account services.

TRPIS also provides educational tools and services to individual retirement savers through retail products and is similarly concerned that the Proposed Rule may cause some of these tools and services to be considered fiduciary investment advice where there is no expectation of a fiduciary relationship. We do not believe the valuable tools and educational content provided by TRPIS to retirement savers constitutes advice, nor are the experiences delivered with the expectation of a fiduciary relationship. Our service model is designed to provide fiduciary advice to those who need it,[10] and education to all; it is a beneficial design that enables all retirement savers served to receive the level of support they need. The Proposed Rule risks compromising this effective structure and creating disincentives for entities like TRPIS to provide valuable education and tools that assist retirement savers in making constructive decisions that improve their retirement outlooks.

For example, TRPIS provides education to individual retirement savers on retirement planning, investing, portfolio management and asset allocation, retirement income, and other financial topics through articles, videos, podcasts, and interactive tools. Some of these tools and services, including educational conversations facilitated by associates, have evolved (or are being enhanced) to provide a more personalized educational experience. For example, in digital and contact center experiences, TRPIS intends to assist a retirement saver with identifying an asset allocation strategy consistent with their investment horizon, drawdown horizon, and risk tolerance. While no specific investment recommendations are provided and the experiences are designed to help retirement savers arrive at their own decisions, the helpful personalization of this educational experience may cause the interaction to be treated as fiduciary investment advice, even where the user of this tool understands it to be educational rather than advisory. Consequently, we are concerned that the Proposed Rule may undermine the ability to effectively offer non-fiduciary education and support and may ultimately deprive individual retirement savers from receiving relevant educational experiences and tools. We are also concerned that this may ultimately result in suboptimal outcomes for the majority of retirement savers served by our retail business, who currently seek education instead of an advisory relationship.

This change creates similar issues for TRPA and TRPIM that act as investment managers. For example, and as more fully discussed in SIFMA's comment letter,[11] it appears that an investment manager retained as a discretionary fiduciary for part of a plan's assets (such as one of its investment options) could not provide information and analyses relating to broader topics such as strategic asset allocation, liability driven investing, or other investment strategies without triggering fiduciary status. This is an unworkable result that would likely chill discussions that are valuable to and benefit retirement plans and their participants.

Because T. Rowe Price is in the business of providing investment advisory services generally, the Proposed Rule may impose fiduciary status on some of these activities—even those that we would normally consider purely educational. This treatment will undoubtedly have a chilling effect on the information and educational content provided to retirement savers by firms like T. Rowe Price, thereby causing damage to sound federal policy of encouraging retirement savings. Moreover, this change switches the fiduciary definition from a transactional definition, as the Department asserts, to a definition that is based on an imprecise description of the business of the person providing advice. Without further clarification or exemptions, certain companies will become fiduciaries in all instances regardless of the expectations of the parties engaged in the interaction. The Department is creating potential harm by changing the "regular basis" standard such that the determinative factor is not that the

[10] II offers advisory services through T. Rowe Price Advisory Services ("TRPAS") to retail clients who are seeking recommendations. TRPAS serves as a fiduciary in delivering advice.

[11] *See* SIFMA Comment Letter on the proposed Retirement Security Rule: Definition of an Investment Advice Fiduciary.

individual providing a recommendation provides investment recommendations on a regular basis to the individual involved in the interaction.

2. Sales Conversations

In the Proposed Rule, the Department views a recommendation as a communication that, based on its content, context, and presentation, would reasonably be viewed as a suggestion that the retirement investor engage in or refrain from taking a particular course of action.[12] Additionally, the preamble explains that "providing a selective list of securities to a particular retirement investor as appropriate for the investor would be a recommendation as to the advisability of acquiring securities even if no recommendation is made with respect to any one security."[13] This interpretation would constrain current standard, non-abusive sales practices and other common interactions that do not create an objectively reasonable expectation of fiduciary-level trust and confidence. Two examples illustrate this concern:

- *Fund Line-ups*. In its capacity as recordkeeper, TRP RPS frequently provides responses to RFPs that contain sample plan investment line-ups often at the request of, or as a required condition of bidding set by, plan fiduciaries seeking proposals. These sample line-ups can be important to the pricing of recordkeeping services, as plan fiduciaries seek to estimate the specific indirect compensation that may be generated by certain investments. Sample line-ups provide important ideas and comparators that the fiduciary will use in arriving at their ultimate decision and are often required as a condition of a response to an RFP. Treating such an interaction in the context of a sales presentation (or even in the context of a discussion of fund substitution ideas) as fiduciary-level advice does not comport with industry expectations. Were such interactions to be deemed advice, service providers might hesitate to provide sample line-ups, making the process of understanding recordkeeping pricing more cumbersome.

- *Ad-Hoc Investment Idea Exchange*. Plan fiduciaries often turn to trusted advisers for additional insight into markets or investment approaches not covered by the manager's current investment mandate. For example, plan fiduciaries seek input from TRPA concerning our views on what sub-asset classes might be appropriate for a new fixed income mandate for their plan, or the types of investments we might use to implement a particular investment objective. These conversations serve a useful purpose for plan fiduciaries seeking new ideas or perspectives for their plan investment program. Adopting a more practical definition of fiduciary investment advice would allow these types of useful conversations to continue.

Firms that sell products should not be held to a fiduciary standard that effectively prohibits them from explaining to plan fiduciaries and their advisers how products and services may meet their needs.

3. Interactions with Plan Fiduciaries and Advisers

The Proposed Rule does not include carve-outs or exceptions for sophisticated fiduciaries, platform providers, selection or monitoring assistance, or "wholesaling" activity.[14] Given the breadth of the expanded fiduciary definition, we believe that this is an oversight. Without a carve-out or further clarification, the Proposed Rule could capture virtually any conversation that includes any tailoring to the plan (e.g., a sample investment lineup) when dealing with plan fiduciaries and their advisers. Moreover, firms that provide discretionary investment management services, such as T. Rowe Price, would not have to provide an individualized recommendation to trigger fiduciary status.

[12] 88 Fed. Reg. at 75904.

[13] *Id*.

[14] 88 Fed. Reg. at 75907.

The lack of a carve-out for platform providers could make ordinary sales activities of recordkeepers subject to the Proposed Rule. For example, TRP RPS' platforms offer thousands of investment options (including different share or unit classes of specific options). A simple list with thousands of entries is insufficient to help fiduciaries navigate through the choices. To assist prospective plan clients and their advisers, TRP RPS offers curated lists using disclosed, objective criteria (often sourced by TRP RPS from third parties under license). If this were to be a fiduciary-level task, we would likely reevaluate this service.

Similarly, if the Proposed Rule is finalized, TRPIS would face daunting change management needs in parallel with TRP RPS. These changes could potentially include service model changes, associate retraining, and technology investment to bring client experiences into compliance with the new rule. We anticipate any resulting changes would generally diminish the client experience offered to retirement savers by reducing the scope and depth of access to educational content and tools designed to help retirement savers make constructive decisions.

While the preamble provides some clarification of these concerns, we recommend that these clarifications be made in the rule itself. We understand that the Department would find it helpful to offer specific language recommendations but, given the short comment period, we are not able to provide that specificity. However, the overarching principle of the rule should be, for each prong of the test, that a recommendation be individualized to a person, account, or plan and that there is a mutual understanding that the relationship is one of trust and confidence. Fiduciary status should not apply where there is no reasonable expectation of fiduciary status. We believe that this need for clarification highlights the need for further review and discussion of this proposal.

4. Increased Risk of Litigation

Even though the Department's intent is a narrowly tailored rule, we believe the Proposed Rule would create greater confusion. Moreover, it could create unnecessary litigation risk. As you are aware, the number of class action lawsuits in ERISA has increased exponentially in recent years.[15] A rule without clarity—such as the one being proposed—will attract additional class action lawsuits. Even if defendants are ultimately in the right, many will be driven to a settlement to avoid extensive litigation costs.[16] Therefore, a clear and objective definition of an investment advice fiduciary is necessary.

The Proposed Amendments to PTE 2020-02 Require Additional Time for Analysis. Because of the proposed changes to other class exemptions, T. Rowe Price will likely need to rely on PTE 2020-02 more often in the future.[17] However, as noted below, the short comment period has not provided sufficient time to comprehensively analyze the impact of both PTE 2020-02 as it currently stands and the proposed changes. Furthermore, there are several instances where the Department asks for feedback on the current PTE as well as the proposed changes. Given the limited time that PTE 2020-02 has been in place, it seems that it would be helpful to continue to see how well it works and whether these changes are in the best interests of retirement savers and plan fiduciaries—

[15] Since 2020, over 150 class actions lawsuits have been filed under ERISA. *See* Mia Farber, David R. Golder, and Eric R. Magnus, *Jackson Lewis Class Action Trends Report 2022: ERISA class action developments*, The National Law Review, December 26, 2023 at https://www.natlawreview.com/article/jackson-lewis-class-action-trends-report-2022-erisa-class-action-developments.

[16] Jacklyn Wille, *R.R. Donnelley 401(k) Fee Suit Settles for Nearly $1.2 Million*, Bloomberg Law, December 26, 2023 citing settlements for Spectrum Health System for $6 million, Wake Forest University Baptist Medical Center for $3.8 million, Omnicom Group Inc. for $2.45 million, Stantec Consulting Services Inc. for $2 million, VCA Inc. for $1.5 million, NCL Corp. for $615,000, and Munson Healthcare for $600,000.

[17] T. Rowe Price currently uses a number of PTEs that the Department proposed to amend. If these changes become final, we may no longer be able to use them and, instead, will need to use PTE 2020-02. For example, T. Rowe Price uses PTE 77-4 for its discretionary advisory services but will need to shift to PTE 2020-02 for non-discretionary advisory services.

especially because the proposed changes to the rule and other class exemptions are intended to drive greater use of PTE 2020-02.[18]

Even with the limited time for review, there are certain issues that have already raised concern.

1. PTE 2020-02 Should Not Require Public Website Disclosure

In the preamble to the amendments to PTE 2020-02, the Department asks whether it should require Financial Institutions to maintain a public website containing the pre-transaction disclosure, a description of the Financial Institution's business model, associated Conflicts of Interest (including arrangements that provide Third-Party Payments), and a schedule of typical fees.[19] We do not agree with including such a requirement. The Department admits that it has many questions about the effectiveness of such disclosures and the costs associated with such disclosures. As such, there is still more review and discussion required by all parties before including this requirement in a final exemption.

2. The Eligibility Provisions Under PTE 2020-02 Could Create Inconsistency and Unfairness

The Proposed Exemption clarifies and expands the circumstances under which a Financial Institution may become ineligible to rely on PTE 2020-02. The Proposed Exemption would codify the Department's view that a conviction handed down to a Financial Institution or an affiliate by a "foreign court of competent jurisdiction" may disqualify a Financial Institution from relying on PTE 2020-02, provided that the conviction is for a crime "substantially equivalent" to U.S. federal or state crimes already enumerated in the current definition of criminal conviction.[20] This proposed change sets up a false equivalence between and among foreign jurisdictions and creates a situation where the Department becomes the arbiter of such equivalence. In some jurisdictions with well-developed legal systems, presumptions of innocence and other appropriate protections for those accused of crimes, this may be acceptable, but it is not acceptable if the foreign jurisdiction does not meet that standard. It is not clear that the Department is equipped to make this determination.[21] Consequently, we believe that this situation could result in inconsistency and unfairness as well as, in some cases, a lack of due process. As with the rest of the proposed amendments, we believe this provision needs further consideration. For example, the Investment Adviser Association makes a recommendation in its comment letter to require certain certifications from the Financial Institution and allow the Department to make a decision based on the circumstances.[22] We believe that this is at least one reasonable alternative that would make better provision for due process.

3. The Department Should Not Require Disclosures to Additional Parties

The Proposed Exemption expands those who can receive access to records to those authorized by the Department, the Internal Revenue Service ("IRS"), state or federal regulators, plan fiduciaries, contributing employers and employee organizations, and plan participants, beneficiaries, and IRA beneficial owners. While we understand that the Department and other regulators may need access to certain records, the Department has not given a reason for expanding the types of entities that can have access to plan records. As a matter of fact,

[18] We support the concerns raised by a number of other comments about the changes to PTE 2020-02 and the other exemptions. *See* Investment Company Institute Comment Letter, Securities Industry and Financial Markets Association (SIFMA) Comment Letter, SPARK Institute Comment Letter, and Investment Adviser Association Comment Letter on the proposed Retirement Security Rule: Definition of an Investment Advice Fiduciary.

[19] 88 Fed. Reg. at 75986.

[20] 88 Fed. Reg. at 75989.

[21] We raised this same concern in our comment letter in response to Proposed Amendment to Prohibited Transaction Class Exemption 84-14 ("the QPAM Exemption") at https://www.regulations.gov/comment/EBSA-2022-0008-0027.

[22] Investment Adviser Association Comment Letter on Retirement Security Rule: Definition of an Investment Advice Fiduciary and Proposed Amendment to Prohibited Transaction Exemption 2020-02.

the Department notes that it originally recommended this provision but limited that access in the final exemption in response to comments.[23] The only reason the Department gives for re-proposing this provision is a "view both that Financial Institutions could easily share their documentation of compliance and that Retirement Investors would benefit from access to that information."[24] We do not believe that this is enough evidence to warrant an inclusion of a proposal that was previously rejected.

The Current Proposal Does Not Respond to Concerns Raised by the Fifth Circuit. The preamble to the Proposed Rule states that:

> The Department's proposal is also intended to be responsive to the Fifth Circuit's emphasis on relationships of trust and confidence. The current proposal is much more narrowly tailored than the 2016 Final Rule, which treated as fiduciary advice, any compensated investment recommendation as long as it was directed to a specific retirement investor regarding the advisability of a particular investment or management decision with respect to securities or other investment property of the plan or IRA.[25]

We respectfully disagree. As evidenced by our concerns about the lack of clarifications, carve-outs, and exceptions, there are a number of areas where we find the definition to be overly broad and inconsistent with the traditional common law views of a fiduciary relationship. Furthermore, we support the arguments made by several other commentors that the proposal does not respond to the Fifth Circuit's concerns and is not narrowly tailored.[26]

The Economic Analysis of the Proposed Rule and Amended Exemptions Requires Further Consideration. While we did not have time to provide a comprehensive review of the Regulatory Impact Analysis, it is important to note that our review of the Proposed Rule required the attention of more than eight dedicated legal professionals in T. Rowe Price who worked with numerous other financial professionals, totaling hundreds of work hours. If a final rule is issued, we expect the number of professionals involved and work hours used to increase substantially. Moreover, the compliance costs will be substantial. For example, recordkeepers like TRP RPS often enter into contracts that are carefully drawn (and priced) to exclude fiduciary activities. If the Proposal were to become final, TRP RPS would need time to renegotiate its contracts to either reprice in light of expanded duties or eliminate services newly elevated to fiduciary status. The time proposed for the effective date and applicability date would not give sufficient time to conclude that negotiation.

Given the time and effort that TRP as a single firm has already spent and anticipates spending on a final rule, we question whether the additional costs and burdens are worth the anticipated benefit of a new rule.[27] Especially, as this is the fourth potential iteration of the rule since 2010 and it has been the subject of legislation, has been withdrawn and reproposed, and has been vacated through litigation. All of these activities have come with substantial costs and the Department has not shown that the incremental benefits (if any) of a new rule are greater than disruption caused to the industry with yet another change.[28]

---

[23] 88 Fed. Reg. at 75990.

[24] *Id*.

[25] 88 Fed. Reg. at 75901.

[26] *See* SIFMA and ICI Comment Letters on the Retirement Security Rule: Definition of an Investment Advice Fiduciary.

[27] *See* ICI Comment Letter explaining the change in the regulatory landscape that question the benefit of the Proposed Rule.

[28] *See* SIFMA Comment Letter and Economic Analysis Attachment.

The Comment Period is Insufficient to Provide a Full and Comprehensive Analysis. In this letter, we have begun to explain a number of issues with the Proposed Rule. However, it is imperative to highlight that we do not consider ours to be a full review of the impact of the proposal because the comment period has been so short. In the best of circumstances, 60 days to review more than 1,000 pages of regulatory changes would be a challenge. But when those 60 days include two national holidays and two major religious holidays, and come at a time when plan professionals are focused on end-of-the-year compliance obligations, it is simply not practical to expect us to be able to complete a comprehensive review.[29] We are disappointed that the Department did not extend the comment period even though several requests were made, including from Members of Congress.[30] Despite the Department's statement that this issue has been in public discourse, this specific proposal and the amendments included have not. Previous conversations about hypothetical changes do not eliminate the requirement for more time to truly understand all of the actual proposed changes that were put forth only 60 days ago.

Given the scope of the concerns raised by us and others, we urge the Department to reconsider its accelerated timeline for finalizing the rule. Rather, we agree with the recommendation of the U.S. Chamber of Commerce that the Department issue a Request for Information to allow a full vetting and review of the many questions that have been raised (and those that are still unknown) around this proposal.[31]

The Proposed Effective Date Does Not Provide Sufficient Time for Implementation of a Final Rule. Similar to the comment period, the proposed effective date is insufficient. Providing only 60 days after publication of the final rule does not allow enough time to digest any changes made between the proposed and final rule and to implement them into the current business model. We recommend an effective date that is at least one year out from the date the rule is finalized.

Conclusion

While we agree with a standard that seeks to promote a client's interests first in the context of a fiduciary relationship, we are concerned about many aspects of the Proposed Rule and accompanying proposed amendments to PTE 2020-02 and other class exemptions. We share the concerns of other commentators about the basis for the Proposed Rule and the procedure implemented in vetting it. We are troubled by substantial shortcomings in both the comment period and in the economic analysis. Finally, we reiterate that there may be other potential impacts and unintended consequences of the proposal that we have not yet uncovered and urge the Department to provide additional time for review, analysis, and discussion of the Proposed Rule.

*****

[29] The Proposed Rule was issued on Halloween—October 31, 2023. Thanksgiving, Hanukkah, Christmas, and New Year's Day all fell during the comment period. By our count, this means that the 60-day comment period included only 41 working days.

[30] Joint Trade Association Comment Letter at https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AC02/00005.pdf; The Honorable Virginia Foxx Comment Letter at https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AC02/00014.pdf; Comment Letter submitted by Senators Jon Tester, Gary Peters, Chris Coons, Benjamin Cardin, Kyrsten Sinema, Maggie Hassan, John Hickenlooper, and Joe Manchin on December 20, 2024.

[31] U.S. Chamber of Commerce Testimony at Department of Labor Public Comment Hearing on Retirement Security Rule: Definition of an Investment Advice Fiduciary and Associated Prohibited Transaction Exemption Amendments, Dec. 12, 2024 at https://www.uschamber.com/retirement/u-s-chamber-testimony-at-dol-ebsa-hearing-on-proposed-retirement-security-rule.

We appreciate the opportunity to provide our perspectives on the Proposed Rule. Please do not hesitate to contact us if we can be of further assistance. Feel free to contact the undersigned at Aliya.Robinson@troweprice.com and Bryan.Venable@troweprice.com.

Sincerely,

Aliya Robinson
Vice President & Managing Legal Counsel
(Legislative & Regulatory Affairs)

Bryan W. Venable
Vice President & Managing Legal Counsel
(Retirement Plan Services)