Justification for Nonmaterial/Nonsubstantive Change

The Best Interest Contract Exemption (the Exemption) was published in the Federal Register on April 8, 2016 (81 FR 21002) pursuant to ERISA section 408(a) and Code section 4975(c)(2), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637 (October 27, 2011)). It was granted by the Department in connection with the publication of a final regulation defining who is a fiduciary of an employee benefit plan under ERISA as a result of giving investment advice to a plan or its participants or beneficiaries[1] (Regulation). The Regulation also applies to the definition of a "fiduciary" of a plan (including an IRA) under the Code.

The Exemption provides relief from provisions of ERISA and the Code that generally prohibit fiduciaries with respect to employee benefit plans and individual retirement accounts (IRAs) from engaging in self-dealing and receiving compensation from third parties in connection with transactions involving the plans and IRAs. The Exemption allows entities such as registered investment advisers, broker-dealers, banks and insurance companies (referred to in the exemption as Financial Institutions), and their employees, agents and representatives (referred to as Advisers), that are ERISA or Code fiduciaries by reason of the provision of investment advice, to receive compensation that may otherwise give rise to prohibited transactions as a result of their advice to plan participants and beneficiaries, IRA owners and certain plan fiduciaries (including small plan sponsors). The Exemption is subject to protective conditions to safeguard the interests of the plans, participants and beneficiaries and IRA owners.

The collections of information for the Exemption were approved under OMB control number 1210-0156, which is currently scheduled to expire on June 30, 2019. The Department is hereby submitting a non-material change request to OMB for PTE 2016-01, which makes technical corrections to the Exemption. All of the corrections either correct typographical errors, clarify provisions that might otherwise be confusing, or bring the text of the exemption into agreement with the Department's intent, as expressed in the PRA analyses for the Regulation and Exemption.

1 81 FR 20945 (April 8, 2016).