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VIA ELECTRONIC SUBMISSION

August 6, 2020

Office of Exemption Determinations
Employee Benefits Security Administration
Attn: Application No. D-12011
U.S. Department of Labor
200 Constitution Avenue N.W., Suite 400
Washington, DC 20210

Re: Improving Investment Advice for Workers & Retirees (Application No. D-12011)

Dear Sir or Madam:

The Vanguard Group Inc. (Vanguard)[1] supports the Department of Labor's (the Department) proposed prohibited transaction class exemption (the Proposed Exemption),[2] which will preserve investor access to high-quality investment advice and provide important investor protections. As part of our core purpose to take a stand for all investors, to treat them fairly, and to give them the best chance for investment success, Vanguard has long advocated for policies that seek to protect individual investors and put their interests first. Throughout the Department's decade-long process to address the delivery of retirement investment advice, we have not wavered in our strong support for a regulatory framework that ensures investors have access to investment advice that is always in their best interest and that those who provide investment advice are held to a fiduciary standard.[3] The Proposed Exemption satisfies this standard and would provide needed clarity on the provision of advice to retirement plans and IRAs. We recommend the Department swiftly adopt the proposal.

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[1] Vanguard is one of the world's leading asset managers and a leading provider of investment, advisory, and recordkeeping services for defined contribution retirement plans. As of June 30, Vanguard managed approximately $6.1 trillion in assets globally on behalf of more than 30 million investors. We provide direct recordkeeping and investment related services to nearly 5 million participants in nearly 1,500 defined contribution plans. These assets account for more than $530 billion of Vanguard's total assets under management. We also manage over $780 billion through Vanguard funds for over 5.1 million individual retirement account (IRA) investors.

[2] 85 Fed. Reg. 40834 (July 7, 2020), *available at* https://www.govinfo.gov/content/pkg/FR-2020-07-07/pdf/2020-14261.pdf.

[3] *See, e.g.,* Letter from F. William McNabb III, Chairman and Chief Executive Officer, Vanguard, to Office of Exemption Determinations, Employee Benefits Security Administration, dated September 15, 2017, *available at* https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA27/00099.pdf.

Professional investment advice and management play critical roles for retirement planning for many investors. Our research demonstrates that all types of investors benefit from investment advice that helps them construct appropriately diversified portfolios with cost-effective investments and management strategies that provide the best chance for long-term investment success.[4] We believe the Proposed Exemption would preserve access to investment advice for retirement investors by appropriately relying on the Impartial Conduct Standards and other protections to address conflicts of interest. These standards will ensure that retirement investors receive advice that is in their best interest, are charged only reasonable compensation, and receive full disclosure of any financial interests or other potential conflicts of interest of their advice provider.

Other provisions of the Proposed Exemption would require a financial institution and its representatives who provide investment advice to make extensive written disclosures to retirement investors prior to engaging in an investment transaction. In addition, financial institutions that utilize the Proposed Exemption must maintain and enforce policies and procedures to ensure that their employees, agents, and representatives are adhering to these obligations, and are not otherwise incentivized or motivated to act contrary to the investor's best interest. These important investor protections supplement the fiduciary standard and provide assurances that the advice provided by retirement fiduciaries will indeed be in the best interest of retirement investors.

The Proposed Exemption also appropriately extends the Impartial Conduct Standards to cover rollover conversations where an advisor recommends a particular course of action, consistent with evolving investor expectations and industry practices. We agree with the Department's analysis that the decision to roll retirement assets among different types of retirement accounts potentially can be a very consequential financial decision for a retirement investor and, as such, agree that a recommendation to take such specific action should be viewed as investment advice. To the extent the remaining prongs of the five-part test for determining fiduciary status are satisfied, then ERISA protections would appropriately apply to such investment advice.[5]

We commend the Department's willingness to adapt its approach considering the many legal and regulatory developments since the Department finalized its fiduciary rulemaking package in 2016. Specifically, we appreciate that the Proposed Exemption would align the standard of care for ERISA fiduciaries with the conduct standards in the Securities and Exchange Commission's

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[4] *See,* "How America Saves 2020 Insights to Action" dated June 2020, *available at* https://institutional.vanguard.com/ngiam/assets/pdf/has/insights-to-action-2020.pdf.

[5] We agree with the recommendation of the Investment Company Institute that advisors need certainty about whether a rollover conversation is subject to fiduciary standards at the time it occurs. The Department's reference to future conversations in the preamble to the Proposed Exemption would be operationally unworkable for an advisor to administer. *See,* Letter from Susan Olson, General Counsel, and David Abbey, Deputy General Counsel – Retirement Policy, Investment Company Institute, to Office of Exemption Determinations, Employee Benefits Security Administration, dated August 6, 2020.

(SEC) Regulation Best Interest and the fiduciary duty of investment advisers under securities laws, which we advocated in our 2018 comment letter to the SEC.[6]

Vanguard supports the Proposed Exemption, and we urge the Department to adopt it. The Department's issuance of this exemption ensures that retirement investors will continue to have access to high-quality investment advice and aligns core protections and principles across regulatory regimes in the brokerage, investment advisory, and retirement marketplaces.

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Vanguard appreciates the opportunity to comment on the proposal. We welcome the opportunity to continue working with the Department on these important issues. If you have any questions or would like to discuss our views further, please contact Natalie Bej at (202) 824-1290 or Stephanie Napier at (610) 503-1377.

Sincerely,

/s/ Mortimer J. Buckley

Mortimer J. Buckley
Chairman and Chief Executive Officer
The Vanguard Group, Inc.

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[6] *See,* Letter from Mortimer J. Buckley, President and Chief Executive Officer, Vanguard, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated August 7, 2018, *available at* https://www.sec.gov/comments/s7-07-18/s70718-4186466-172736.pdf.