

COMMENT LETTER

April 21, 2015

Joint Letter to Department of Labor on Comment Period for Conflict of Interest Rule and Related Exemptions (pdf)

Via <http://www.regulations.gov> April 21, 2015 Employee Benefits Security Administration
U.S. Department of Labor 200 Constitution Avenue, NW Washington, DC 20210 Re:
Comment Period for Conflict of Interest Rule and Related Exemptions Ladies and
Gentlemen: The American Bankers Association (“ABA”),ⁱ American Council of Life Insurers
 (“ACLI”),ⁱⁱ American Retirement Association,ⁱⁱⁱ Association for Advanced Life Underwriting
 (“AALU”),^{iv} Bond Dealers of America (“BDA”),^v Financial Services Institute (“FSI”),^{vi}
 Financial Services Roundtable (“FSR”),^{vii} Investment Company Institute (“ICI”),^{viii}
 Investment Program Association (“IPA”),^{ix} Insured Retirement Institute (“IRI”),^x National
 Association for Fixed Income Annuities (“NAFA”),^{xi} National Association of Insurance and
 Financial Advisors (“NAIFA”),^{xii} Securities Industry and Financial Markets Association
 (“SIFMA”),^{xiii} The National Association of Real Estate Investment Trusts (“NAREIT”),^{xiv} 2
 The Real Estate Roundtable,^{xv} and the U.S. Chamber of Commerce^{xvi} (collectively, the
 “Associations”) hereby request a 45-day extension of the comment period for the U.S.
 Department of Labor’s (the “Department”) proposals regarding the (1) Definition of the
 Term “Fiduciary”; Conflict of Interest Rule—Retirement Investment Advice,^{xvii} (2) Best
 Interest Contract Exemption,^{xviii} (3) Principal Transaction Exemption,^{xix} and (4) related
 amendments to four existing prohibited transaction exemptions^{xx} (collectively, the
 “Proposal”). As the Department is aware, the Proposal comprises a voluminous amount of
 information and, if adopted, would represent a watershed event touching many facets of
 the financial services industry. The Proposal contains detailed new rules, a new exemption
 that will subject IRA advisers to increased legal risk for violations of strict prudence
 requirements, and a host of detailed changes to existing and widely-used exemptions. The
 industry will require time to assess its ability to comply with the conditions of the
 exemptions—which are fundamental to the ability of many financial services companies to
 continue to provide essential services to retirement investors, but which will require
 significant changes in policies and practices, as well as the production of expansive new
 disclosure. The Associations and their respective members appreciate that, in response to
 comments received following the release of the predecessor proposal in October 2010 (the
 “2010 Predecessor Proposal”),^{xxi} the Department has spent considerable time and effort to
 incorporate into the Proposal an avenue for advisers and financial institutions to continue to
 provide services to retirement investors and receive compensation through commission-
 based arrangements. Consistent with the Department’s request, the Associations and their
 respective members are committed to taking a thoughtful and well-informed approach to
 commenting on the Proposal. To do so, the Associations and their respective members need

sufficient time to carefully analyze and understand the practical implications of the Proposal. Given the Proposal's breadth and the far reaching modifications that will be required to meet the conditions to the exemptive relief that the Department perceives as important for the protection of the interests of retirement investors, the 75-day comment period does not provide adequate time for the Associations and their respective members to determine whether they can effectively service the needs of retirement investors within the framework presented in the Proposal. Our concerns with the 75-day comment period are supported by the history of the Proposal. The 2010 Predecessor Proposal (1) was shorter and less complicated than the Proposal; (2) did not include any exemptions, as opposed to the Proposal, which has two new exemptions and amendments to four existing exemptions; and (3) contained an economic analysis that was a fraction as long as the economic analysis regarding the Proposal.^{xxii} Yet not only did the Department provide a 90-day comment period with respect to the 2010 Predecessor Proposal, but the Department also recognized that 90 days was insufficient, later adding two additional weeks to the comment period. In connection with the extension, the Department stated: 3 "We recognize the significance of the proposed rule for plans, participants, beneficiaries and many plan service providers and therefore believe the steps we are announcing today will ensure broad consideration of all the issues and interests in this regulation."^{xxiii} The Associations applauded the Department's decision to establish a 104-day comment period with respect to the 2010 Predecessor Proposal, and to have a hearing and a post-hearing comment period in 2011. In that context, the Associations are very concerned about the much shorter 75-day period provided with respect to a much longer and more complicated Proposal. For these reasons, we are requesting a 45-day extension of the comment period. The Associations believe that a 120-day comment period would lead to more thoughtful and comprehensive input, which will ultimately increase the possibility for a more workable final rule that would benefit all parties. Thank you for your consideration of this request, and please do not hesitate to contact Richard Foster at Richard.Foster@FSRoundtable.org or Felicia Smith at Felicia.Smith@FSRoundtable.org if you have any questions. Respectfully submitted, Richard Foster Senior Vice President and Senior Counsel for Legal and Regulatory Affairs Financial Services Roundtable With a copy to: Mr. Fred Wong Office of Regulations and Interpretations Ms. Karen Lloyd Office of Exemption Determinations Mr. G. Christopher Cosby Office of Policy and Research Employee Benefits Security Administration Department of Labor 4 The Honorable Howard Shelanski Administrator Office of Information and Regulatory Affairs Office of Management and Budget i The American Bankers Association is the voice of the nation's \$15 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits, and extend more than \$8 trillion in loans. ii The American Council of Life Insurers ("ACLI") is a Washington, D.C.-based trade association with approximately 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. iii The American Retirement Association has a long and storied reputation that dates back to its founding in 1966 as the American Society of Pension Actuaries. Today its 20,000+ members and four premier retirement industry associations include every type of pension professional – from business owners, actuaries, consultants and administrators, to insurance professionals, financial advisors, accountants, attorneys and human resource managers. While American Retirement Association members come from all corners of the country, representing every part of the industry, they are all united by their belief in and commitment to the private

retirement system. iv The Association for Advanced Life Underwriting ("AALU") is the leading organization of life insurance professionals who are a trusted voice on policy issues involving Americans' financial security and retirement savings. The AALU also offers professional development tools and learning opportunities to help members grow their practices. Founded in 1957, the AALU counts more than 2,200 insurance professionals as members. www.aalu.org. v The Bond Dealers of America ("BDA") advocates exclusively on behalf of middle-market and regional securities firms active in the municipal and taxable fixed income markets, both institutional and retail. BDA is headquartered in Washington, DC and is solely focused on the legislative, regulatory and market practice issues impacting our member firms. vi The Financial Services Institute ("FSI") is the advocacy organization for independent financial services firms and the independent financial advisors affiliated with them. Established in January 2004, FSI represents over 100 independent broker-dealer members and more than 37,000 financial advisor members. FSI's mission is to create a healthier regulatory environment for our members through effective advocacy, education and public awareness. Our strategy includes involvement in FINRA governance and constructive engagement in the regulatory and legislative process. For more information, please visit www.financialservices.org. vii As advocates for a strong financial future™, FSR represents the largest integrated financial services companies providing banking, insurance, payment, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs. viii The Investment Company Institute ("ICI") is a leading, global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of \$18.1 trillion and serve more than 90 million U.S. shareholders. 5 ix The Investment Program Association ("IPA") was formed in 1985 to provide effective national leadership for the direct investment industry. The IPA supports individual investor access to a variety of asset classes not correlated to the traded markets and historically available only to institutional investors. These include public non-listed REITs ("NL REITs"), business development companies ("BDCs"), energy and equipment leasing programs, and private equity offerings. x The Insured Retirement Institute ("IRI") is the leading association for the retirement income industry. IRI proudly leads a national consumer coalition of more than 30 organizations, and is the only association that represents the entire supply chain of insured retirement strategies. IRI members are the major insurers, asset managers, broker-dealers/distributors, and 150,000 financial professionals. As a not-for-profit organization, IRI provides an objective forum for communication and education, and advocates for the sustainable retirement solutions Americans need to help achieve a secure and dignified retirement. Learn more at www.irionline.org. xi NAFA is the authority on fixed annuities. Our mission is to promote the awareness and understanding of fixed annuities. NAFA educates annuity salespeople, regulators, legislators, journalists, and industry personnel, about the value of fixed annuities and their benefits to consumers. NAFA's membership represents every aspect of the fixed annuity marketplace covering 85% of fixed annuities sold by independent agents, advisors and brokers. NAFA was founded in 1998 and recently celebrated its 15th year of serving the fixed annuity industry. To learn more, visit www.NAFA.com. xii Founded in 1890 as The National Association of Life Underwriters, the National Association of Insurance and Financial Advisors ("NAIFA") is one of the nation's oldest and largest financial services organizations representing the interests of insurance

professionals from every Congressional district in the United States. NAIFA members serve primarily the middle or Main Street market. About half of NAIFA- member clients have annual household incomes of less than \$100,000. Only about 10 percent of their clients have household incomes in excess of \$250,000. xiii SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>. xiv The National Association of Real Estate Investment Trusts (“NAREIT”) is the worldwide representative voice for real estate investment trusts (“REITs”) and publicly-traded real estate companies with an interest in U.S. real estate and capital markets. NAREIT’s members are REITs and other real estate businesses throughout the world that own, operate and finance residential and commercial real estate. xv The Real Estate Roundtable brings together leaders of the nation’s top public and privately held real estate ownership, development, lending and management firms with the leaders of major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy. By identifying, analyzing and coordinating policy positions, The Roundtable’s business and trade association leaders seek to ensure a cohesive industry voice is heard by government officials and the public about real estate and its important role in the global economy. Collectively, Roundtable members’ portfolios contain over 12 billion square feet of office, retail and industrial properties valued at more than \$1 trillion; over 1.5 million apartment units; and in excess of 2.5 million hotel rooms. Participating trade associations represent more than 1.5 million people involved in virtually every aspect of the real estate business. xvi The U.S. Chamber of Commerce is the world’s largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America’s free enterprise system. More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation’s largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large. Besides representing a cross-section of the American business community with respect to the number of employees, major 6 classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states. xvii DEP’T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., Definition of Term “Fiduciary”; Conflict of Interest Rule—Retirement Investment Advice, [RIN: 1210-AB32], 80 Federal Register 21928 (Apr. 20, 2015) (the “Re-Proposing Release”), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08831.pdf>. xviii DEP’T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., Proposed Best Interest Contract Exemption, Application No. D-11712 [ZRIN: 1210-ZA25], 80 Federal Register 21960 (Apr. 20, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08832.pdf>. xix DEP’T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., Proposed Class Exemption for Principal Transactions in Certain Debt Securities between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs, Application No. D-11713 [ZRIN: 1210-ZA25], 80 Federal Register 21989 (Apr. 20, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08833.pdf>. xx DEP’T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., Proposed Amendment to Prohibited Transaction Exemption (PTE) 75-1, Part V, Exemptions from Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Broker-Dealers; Prohibitions Respecting

Certain Classes of Transactions Involving Employee Benefits Plans and Certain Broker-Dealers, Reporting Dealers and Banks, Application No. D-11687 [ZRIN: 1210-ZA25] 80 Federal Register 22004 (Apr. 20, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08836.pdf>; DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction Exemption (PTE) 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies and Investment Company Principal Underwriters, Application No. D-11850 [ZRIN: 1210- ZA25], 80 Federal Register 22010 (Apr. 20, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08837.pdf>; DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction Exemption (PTE) 86-128 for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers; Proposed Amendment to and Proposed Partial Revocation of PTE 75-1, Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks, Application No. D-11327 [ZRIN: 1210-ZA25], 80 Federal Register 22021 (Apr. 20, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08838.pdf>; and DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., Proposed Amendments to Class Exemptions 75-1, 77-4, 80-83 and 83-1, Application No. D-11820 [ZRIN: 1210-ZA25], 80 Federal Register 22035 (Apr. 20, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08839.pdf>. xxi DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., Definition of the Term "Fiduciary," [RIN: 1210-AB32], 75 Federal Register 65263 (Oct. 22, 2010) (the "Proposing Release"), available at <http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=24328>. xxii While we appreciate the significantly more extensive economic analysis of the Proposal compared with the insufficient analysis of the 2010 Predecessor Proposal, the Proposal's economic analysis will require extensive time and resources for review and analysis. xxiii EBSA NEWS (Dec. 22, 2010).