

Office of Exemption Determinations
Employee Benefits Security Administration
Room N-5700
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: Proposed Regulation regarding Prohibited Transaction Exemption Procedures (DOL Proposed Regulation Section 2570.30-2570.52)

Ladies and Gentlemen:

I am President of Cognient Advisors, a financial advisory firm with special expertise in advising corporate Boards and other fiduciaries including ERISA fiduciaries in complex transactions. The principals of Cognient have in total over 100 years of experience in providing valuations and other financial advisory services to corporate Boards, fiduciaries and business owners. Most of the principals of Cognient have had significant experience at larger firms. I am the former President and CEO of Duff & Phelps, Inc. and two of my partners were senior members of the ERISA Financial Advisory Practice at the firm.

We are very concerned about the proposed regulations regarding the definition of an independent appraiser. We believe that this regulation might preclude a smaller firm such as ours from advising ERISA fiduciaries on large, complex transactions. Such large complex transactions often require significant analytical work which may span several months' time frame. It is likely that such a transaction would require professional time charges which could be significantly greater than 1% of the revenues¹ of a specialized firm such as Cognient. Furthermore, there are only a handful of independent fiduciaries willing and able to execute complex ERISA transactions. An advisory firm specializing in ERISA related work is likely to complete multiple assignments for a particular independent fiduciary during the course of a year. Under the proposed regulation, it appears that collectively all of the work for one fiduciary might need to fall below the 1% rule further limiting the ability of smaller advisory firms to meet this criterion. Lastly, for reasons outlined below we do not believe that a straight percentage of revenue test sufficiently captures those factors which may impact independence. As the proposed regulation states: "the independence of the appraiser is made by the Department on the basis of all relevant facts and

¹ We note that the proposed regulation variously uses the terms "income" (in the text of the proposed regulation) and "compensation" (in the supplementary information). We assume here that the Department means to refer to gross revenue, and strongly encourage the Department to correct this drafting error. To the extent that the intent is to reference income as it relates to corporate (as opposed to individual) appraisers, the adverse affects of the proposed regulation could be nothing short of catastrophic for all but the handful of the largest advisory firms who perform work involving ERISA plans.

circumstances.” We believe that this flexible standard serves what we understand to be the Department’s concerns far better than a bright-line rule applied equally in all circumstances.

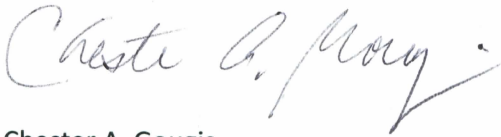
The likely result of this regulation would be to limit the choices of independent fiduciaries to larger valuation firms or investment banking firms, which firms likely would be potentially less experienced, less objective, and more costly. The Department should be concerned about this outcome.

- 1) Expertise in Smaller Firms is Often Stronger and Deeper. In recent years the number and scope of complex financial transactions involving ERISA plans has declined, as has the number of ESOP transactions. As a result, many larger investment banking and valuation firms have reduced the scope of their ERISA related practices. With four senior partners with deep ERISA advisory expertise, I believe Cognient has one of the largest, strongest ERISA financial teams in the country. Many other sophisticated ERISA financial professionals also practice with smaller firms.
- 2) The Incentives to Provide Objective Advice to a Fiduciary May Be Better for Smaller firm. In many transactions the key relationships between various parties extend far beyond the specific transaction at hand. These relationships may be the key obstacles to independent and objective advice. To illustrate this point consider an example: Large investment bank A proposes a transaction to public company B which requires an exemption. B hires an independent fiduciary X to represent the Plan and X hires large appraisal firm Y to provide appraisal and advisory services. This particular transaction is a de minimis portion of Y’s revenue and Y had never worked for B before. However, A is a major player in financial transactions and regularly advises its clients to retain Y for a wide variety of appraisal services. The ERISA practice of Y is very small relative to the amount of work referred to the firm by A. Clearly the ERISA partner at Y completing the assignment will face a challenging circumstance if they had to reach a conclusion that became an obstacle to A’s transaction. In contrast, the smaller appraisal firm Z may depend more heavily on ERISA related work. The bigger risk to Z would be rendering a conclusion which could result in a problem down the road for its fiduciary client X. In this case the smaller firm actually has a greater incentive to provide objective, independent advice. This example illustrates that independence is a complex issue which cannot be determined by a simple reference to the fee as a percent of revenue
- 3) Fees for Smaller Firms Are Likely to be Lower. Another reason many larger firms have reduced their ERISA practice is that the fees in ERISA transactions are often lower than those in other types of transactions. In general, smaller firms with less overhead and ancillary services are able to offer more competitive fees, which ultimately benefit participants by reducing transaction costs.

In summary, this proposed regulation would disqualify most smaller firms from acting as financial advisor to independent fiduciaries in these transactions. This would deprive fiduciaries of access to some

of the most experienced and talented advisors, would likely increase costs and could reduce incentives for objectivity. As a minority owned advisory firm, I can also say it would have the effect of significantly reducing diversity since most minority owned advisory firms are smaller entities. Smaller firms have historically been the most dynamic and innovative in most sectors of our economy and the financial advisory and valuation businesses are no exception. The impact of this aspect of the proposed regulation would be counter to a host of broad public policy goals.

Thank you for your consideration

A handwritten signature in cursive script, reading "Chester A. Gougis". The signature is written in dark ink and is positioned above the printed name.

Chester A. Gougis

President

Cognient Group