

April 28, 2015

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Ave., NW, Room N-5655  
Washington, D.C. 20210

Re: Comment Period for Conflict of Interest Rule (Proposal) – RIN 1210-AB32: April 21, 2015 Letter of the American Bankers Association and Other Trades Requesting Extension to the Comment Period (Joint Trades Letter)

Ladies and Gentlemen:

Last week, responding to press comments about the Joint Trades Letter, Labor Secretary Perez is reported to have said that he would not favor a 45-day extension request. According to the reports, Secretary Perez stated, “The comment period is 75 days, followed by a public hearing and publication of the transcript followed by another opportunity to comment on it; that’s all in the aftermath of 18 months of informal outreach. That’s a long time that we’ve provided, and we’ll make sure we’ve heard people’s voices.”<sup>1</sup> While we do not question that the Department of Labor (Department) is committed to a full and fair vetting of the Proposal, the public, as stated in Executive Order No. 13579, must “have a meaningful opportunity to participate in rulemaking.”<sup>2</sup>

Although Department staff has worked diligently on preparing the Proposal for nearly 3½ years, during that time the public was given no opportunity to review either the proposed language or its explanatory text, nor see or consider even a summary description of the Proposal. Going forward, it is our hope and expectation that the Department will follow a measured and deliberative rulemaking process that will allow the public to participate and contribute fully to the public consideration of the Proposal. Allowing for a 45-day extension to the 75 days proposed would be consistent with this regulatory objective.

The American Bankers Association<sup>3</sup> (ABA) therefore renews a request for a 45-day extension of the comment period for the Proposal, consisting of (1) Definition of the Term “Fiduciary”;

---

<sup>1</sup> *DOL Not Budging on Fiduciary Rule Comment Period*, ThinkAdvisor, [www.thinkadvisor.com](http://www.thinkadvisor.com) (April 23, 2015).

<sup>2</sup> Executive Order No. 13579 §1(a) (July 11, 2011).

<sup>3</sup> 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. Many of these banks are plan service providers, providing trust, custody, and other services for institutional clients, including employee benefit plans covered by the Employee Retirement Income Security Act (ERISA). Learn more at [www.aba.com](http://www.aba.com).

Conflict of Interest Rule – Retirement Investment Advice; (2) Best Interest Contract Exemption; (3) Principal Transaction Exemption; and (4) related amendments to four existing prohibited transaction exemptions (PTEs).<sup>4</sup> A 45-day extension would allow the public a total of 120 days to comment on the Proposal, in place of the 75-day period set by the Department.

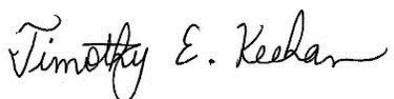
The Proposal is a culmination of several years' work by the Department to re-fashion its original proposal introduced in October 2010 (2010 Proposal) which would have broadly expanded the definition of "fiduciary" under the Employee Retirement Income Security Act (ERISA). The Proposal refines and significantly enlarges the former proposal through a lengthier and more complex proposed rule, together with the introduction and anticipated use of new and amended prohibited transaction exemptions (PTEs) and a detailed economic analysis. Indeed, in both size and scope, the latest Proposal dwarfs the 2010 Proposal.

It is peculiar, therefore, that the 2010 Proposal was given an initial 90-day comment period versus the 75 days allotted for public comment on the new Proposal. In preparing a written response, the public needs adequate time to read, understand, analyze, and evaluate the Proposal's roughly 700 pages.

An initial discussion with ABA's member banks has raised concerns about a number of provisions in the Proposal that necessitate the Department's explanation and interpretation in order to understand what the Proposal actually means. Consequently, ABA also requests to meet with Department staff to discuss aspects of the Proposal that require clarification. Such opportunity for dialogue would be consistent with President Obama's Executive Order No. 13563, which states that agencies "must ensure that regulations are accessible, consistent, *written in plain language, and easy to understand.*"<sup>5</sup> A Department briefing will greatly assist ABA in fashioning a comprehensive, thoughtful, and responsive comment letter.

Thank you for your consideration of this request. If you have any questions or require any additional information, please do not hesitate to contact the undersigned at 202-663-5479.

Sincerely,



Timothy E. Keehan  
Vice President & Senior Counsel

---

<sup>4</sup> See 80 Fed. Reg. 21,928 (April 20, 2015).

<sup>5</sup> Executive Order No. 13563 § 1 (Jan. 18, 2011). [Emphasis added.]