NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS®

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REITs: BUILDING DIVIDENDS AND DIVERSIFICATION®

April 17, 2017

Submitted Electronically – EBSA.FiduciaryRuleExamination@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attention: Fiduciary Rule Examination
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: Definition of the Term "Fiduciary"—Additional Comments Regarding the Economic Impact of the Rule and Associated Exemptions (RIN 1210-AB79)

Ladies and Gentlemen:

The Public Non-Listed REIT ("PNLR") Council of the National Association of Real Estate Investment Trusts[1] ("NAREIT") appreciates this opportunity to comment to the Department of Labor (Department or DOL) on the issues raised in the February 3, 2017 *Presidential Memorandum*[2], regarding the effect of the Fiduciary Rule, redefining fiduciary investment advice and its associated new and amended prohibited transaction class exemptions (collectively the "Fiduciary Rule")[3] on the ability of Americans to gain access to retirement information and financial advice. The PNLR Council[4] previously submitted comments to DOL regarding the proposed Fiduciary Rule on July 21, 2015 and September 24, 2015.

About PNLRs:

PNLRs are public companies whose securities are registered with the SEC and are not listed on a stock exchange. PNLRs own, manage and lease investment-grade, income-producing commercial real estate in nearly all property sectors.

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[1] The National Association of Real Estate Investment Trusts ("NAREIT") is the worldwide voice for REITs and real estate companies with interests 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 commercial and residential real estate.

[2] *Presidential Memorandum* at https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule.

[3] 81 Fed. Reg. 20,945 – 21,221 (Apr. 8, 2016).

[4] PNLRs participate at NAREIT through the Public Non-Listed REIT Council (the "PNLR Council"), which consists of 44 NAREIT PNLR corporate members. The mission of the PNLR Council is to advise NAREIT's Executive Board on matters of interest and importance to PNLRs.

PNLRs are subject to IRS requirements that include distributing all of their taxable income to shareholders annually in order to be subject to just one level of taxation, and must make regular Security and Exchange Commission ("SEC") filings, including quarterly and yearly financial reports, which are publicly available through the SEC's EDGAR database. Interests in a PNLR are public offerings, exchanged primarily through broker-dealers registered with and regulated by the SEC, the Financial Industry Regulatory Association ("FINRA"), and the relevant state securities regulatory authorities.

PNLRs help build diversified portfolios for retirement plan investors. Typically paying meaningful dividends due to the IRS REIT distribution requirements, PNLRs also provide the potential for moderate, long-term capital appreciation. As the leases, rents, properties and other underlying investments have tended to be responsive to inflation, PNLRs generally offer the potential for some protection from inflation risks. Further, PNLRs potentially provide an additional source of portfolio diversification because their investment returns reflect the performance of income-producing real estate, which typically has been only moderately correlated with the returns of other assets over long investment horizons.

As with mutual funds or any other pooled investment, there are a variety of fees charged in connection with PNLRs that are reflected in net returns and clearly disclosed in each prospectus, which is declared effective by the SEC and provided prior to making an investment. These fees became even more transparent to PNLR shareholders when FINRA Regulatory Notice 15-02 became effective last year.

PNLR Council Urges Additional Study and Analysis:

The PNLR Council continues to support the Department's goal of ensuring that financial advisors put the best interests of retirement plans, plan participants and IRA owners first. However, we continue to have a number of specific concerns about the negative effect that the Fiduciary Rule would have on the availability of quality investments, like PNLRs, used by IRA owners and participants to diversify their retirement portfolios.

For this reason, we support DOL's recent decision to defer the initial applicability date of the Fiduciary Rule by 60 days. However, we also agree with the hundreds of comments submitted to DOL in the last month, which contend that an additional 60 days is still insufficient, in light of the many remaining questions concerning the Rule's implementation, costs and benefits to consumers. Moreover, we share concerns raised by others that the "rush to compliance" be counter-productive to DOL's goal of protecting workers and retirees. For this reason, we join the Investment Program Association (IPA), the U.S. Chamber of Commerce and others in urging DOL to further delay the implementation to afford time for further analysis of the issues raised by the President in his February 3, 2017 Memorandum.

Conclusion:

We urge the Department to adopt a longer delay in the applicablity date of the Fiduciary Rule to enable it to undertake the important work of analyzing the important issues raised in the February 3, 2017 *Presidential Memorandum.*

We appreciate the opportunity to provide these comments and would be happy to answer any questions you may have.

Respectfully submitted,

Executive Committee
NAREIT PNLR Council

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