

July 18, 2017

Office of Exemption Determinations  
Employee Benefits Security Administration  
Attn: D-11933  
U.S. Department of Labor  
200 Constitution Avenue NW  
Suite 400  
Washington, DC 20210

**Re: Request for Information Regarding the Fiduciary Rule and Prohibited  
Transaction Exemptions  
RIN 1210-AB82**

Dear Madam or Sir:

The American Retirement Association (the “ARA”) thanks the Department of Labor (the “Department”) for its Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (the “RFI”).

In this letter, the ARA addresses the RFI as follows:

- *Delay of the January 1, 2018 Applicability Date.* The ARA recommends a delay of the January 1, 2018, applicability date (the “2018 Applicability Date”) for certain provisions of the Best Interest Contract Exemption (“BIC Exemption”), the Principal Transaction Exemption, and amendments to PTE 84-24 (the “Delayed Guidance”). As explained below, an extension would reduce unnecessary burdens on financial service providers (“Financial Institutions”) and pose minimal risk to the interests of retirement investors (“Retirement Investors”).
- *Alternative Streamlined Exemption.* The ARA recommends an alternative streamlined exemption (the “Levelized Fee Exemption”) that would remain protective of the Interests of Retirement Investors while greatly reducing the regulatory burden imposed on Financial Institutions and Retirement Investors. The Levelized Fee Exemption would more broadly encompass the wide range of “levelization” processes in use across the retirement marketplace and further continuing innovation in this area.

**I. Delay of the Applicability Date.**

The ARA appreciates the Department’s prior guidance extending the applicability date for the Delayed Guidance to January 1, 2018.<sup>1</sup> This delay significantly reduced the regulatory burdens imposed on Financial Institutions by reducing the need for compliance policies that may

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<sup>1</sup> 82 Fed. Reg. 16902.

evolve as part of the Department's steps in response to the RFI. Further, the delay significantly reduced the burden on Retirement Investors because (1) the number of communications to be sent to Retirement Investors (*e.g.*, BIC transition notices) were reduced and (2) the services made available to Retirement Investors were not reduced<sup>2</sup> by Financial Institutions in order to ensure compliance with the Delayed Guidance.

However, a further delay is necessary. The ARA recommends that the 2018 Applicability Date be extended until the later of 6 months after the Delayed Guidance finally becomes applicable in its entirety or 6 months after the date that any supplemental prohibited transaction guidance issued by the Department becomes applicable. A further delay of the 2018 Applicability Date would provide a number of benefits:

First, as the RFI recognizes, the retirement marketplace is rapidly evolving. The Department's recent regulatory initiatives bear some responsibility for this evolution. In addition, the retirement marketplace in the United States is one that has long been marked by ongoing innovation.<sup>3</sup> A wide variety of products and services have been developed over the years in response to market demand and competition among service providers.

Failure to extend the 2018 Applicability Date is likely to restrict this innovative spirit. In fact, a number of new products have been delayed, abandoned or not even developed because of the final fiduciary rule. This result has occurred because service providers have felt it necessary to devote their resources to ensuring that their products fit within the perceived narrow confines of the final fiduciary rule. The Department has regularly stated that its intent in promulgating the BIC Exemption was to create a broad-ranging "principles-based" exemption.<sup>4</sup> The unfortunate effect of the Delayed Guidance, however, has been for the retirement marketplace to read these principles very narrowly. By doing so, service providers avoid the significant downside risk that a specific action or activity could be seen, whether by the Department or a court of law, as being inconsistent with the Delayed Guidance's requirements. Extending the 2018 Applicability Date would provide more time to create new products and to develop streamlined exemption solutions that would mitigate many of these concerns. Thus, a delay would have the effect of (1) increasing the services and options and (2) minimizing the unnecessary expenditure of both Financial Institution and Retirement Investor resources on restrictive solutions perceived to be necessary for risk mitigation reasons under the Delayed Guidance.

Second, the ARA recognizes that there are concerns about potential additional costs to Retirement Investors associated with any further delay in the 2018 Applicability Date. These concerns, however, are already addressed since only certain provisions of the BIC Exemption and related exemptions are delayed. Through the expanded scope of the fiduciary rule as well as

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<sup>2</sup> Prior to the delay, there was significant concern among Financial Institutions that the structure of existing products or services would not satisfy the requirements of the BIC Exemption or would require complex and costly compliance efforts. As a result, a number of Advisers and Financial Institutions had begun taking steps to eliminate services, such as educational services that might constitute investment advice under the final fiduciary rule, from their service offerings for existing and future clients.

<sup>3</sup> Examples of widely acknowledged useful innovations include target date funds, wellness solutions, and the use of modern technologies and communication methods.

<sup>4</sup> 81 Fed. Reg. 21002, 21007 (Apr. 8, 2016) ("The exemption takes a principles-based approach . . .").

the imposition of the Impartial Conduct Standards as a requirement for compliance under the Delayed Guidance on and after June 9, 2017, the Department has already implemented measures that provide significant protection to Retirement Investors. In fact, Financial Institutions have and continue to devote significant resources to ensuring that they have documented their compliance with the Impartial Conduct Standards even though there is no contractual right of action in force at this time. While a delay in the 2018 Applicability Date would mean that the more complex requirements in the Delayed Guidance would not apply on January 1, 2018, the Department would still be able to continue its active enforcement program. Further, if a Financial Institution acts in bad faith, the Department could pursue enforcement consistent with the Department's position in Field Assistance Bulletin 2017-02.

Third, Retirement Investors would benefit from the delay. The ARA and its members have repeatedly heard from Retirement Investors – whether IRA owners or highly sophisticated plan sponsors – that they have been struggling with understanding the impact of the final fiduciary rule and the Delayed Guidance. Specifically, because of the tight timelines governing the fiduciary rule and the Delayed Guidance, Retirement Investors have been inundated with communications that, through no fault of the Financial Institutions, are complex and hard to understand. In fact, many Retirement Investors continue to find themselves facing significant burden and costs in reviewing these communications. Delaying the 2018 Applicability Date would forestall a potential second wave of complex communications that would add significant burdens and costs ultimately to be borne by Retirement Investors. Given the Department's interest in potentially adding further streamlined exemptions, a delay could avoid the regulatory burden of multiple rounds of paperwork as Financial Institutions will have the chance to make informed decisions about their exemption strategies, thus reducing waves of communications and layers of review by Retirement Investors.

Lastly, the benefits of delaying the 2018 Applicability Date would outweigh the costs. Without a delay, Financial Institutions would find themselves investing significant resources over the next five months to prepare for the 2018 Applicability Date. Further, as noted above, Retirement Investors, consistent with their fiduciary duties, would then need to invest significant resources to evaluate and act on Financial Institution communications about their decisions. The ARA understands that the Department may believe that much of the cost of implementing the Delayed Guidance has already been incurred. However, many Financial Institutions have delayed investing resources to complete the significant compliance obligations imposed by the Delayed Guidance because of the uncertainty surrounding the Delayed Guidance as result of the February 3, 2017, Presidential Memorandum on the Fiduciary Duty Rule, the Department's guidance on the initial April 10, 2017, applicability date, the Department's guidance relating to the delay of the June 9, 2017, applicability date, and the Department's Field Assistance Bulletin 2017-02 temporary enforcement policy.<sup>5</sup> With respect to Retirement Investors, as the initial June 9, 2017, applicability date fiduciary rule highlighted, many Retirement Investors have had to grapple with choices between accepting new service offerings that modify their services (such as losing access to advice) and agreeing to additional costs on a prospective basis. These potential costs remain an issue with the 2018 Applicability Date looming.

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<sup>5</sup> Memorandum from the Exec. Office of the President to the Sec'y of Labor (Feb. 3, 2017); 82 Fed. Reg. 16902 (Apr. 7, 2017); DOL Conflict of Interest FAQs (May 2017); DOL FAB 2017-02 (May 22, 2017).

Thus, the ARA requests that the Department further delay the 2018 Applicability Date until the later of 6 months after the Delayed Guidance finally becomes applicable in its entirety or 6 months after the date that any supplemental prohibited transaction guidance issued by the Department becomes applicable in order to provide Financial Institutions and Retirement Investors sufficient time to come into compliance with the Delayed Guidance.

## **II. Alternative Streamlined Exemption – The Levelized Fee Exemption**

### **A. Introduction**

In its July 20, 2015, and September 23, 2015, comment letters on the proposed fiduciary rule, the ARA advocated for the “Level-to-Level Exemption”. The ARA appreciates the Department’s consideration of this proposal and the integration of many of its concepts into the “Level Fee Fiduciary” rules in the BIC Exemption. While the Level Fee Fiduciary rules addressed a number of concerns, the following significant concerns continue to be a challenge for Financial Institutions and Retirement Investors:

- *Limited Scope of the Definition of Level Fee Fiduciary.* Because of the lack of regulatory clarity, and the perception that the definition of “Level Fee Fiduciary” is narrow in scope, a number of widely-used, unabusive practices in the retirement marketplace now face significant restructuring or elimination.
- *Levelization is Not a Practical Solution for Some Asset Classes.* In working through the operational details of compliance with the Delayed Guidance, both Financial Institutions and Retirement Investors have identified a number of asset classes for which levelization is not practical notwithstanding there are minimal Retirement Investor-adverse incentives to utilize these asset classes.

### **B. The Need for the Levelized Fee Exemption**

There are many reasons why the new Levelized Fee Exemption is necessary:

First, under the Department’s application of the Level Fee Fiduciary rules in the BIC Exemption, the concept of “level fee” does not recognize offsetting arrangements as consistent with being “level”. While, in the preamble to the final fiduciary rule, the Department noted that existing interpretations and advisory opinions, such as *Frost National Bank* (Advisory Opinion 1997-15A, May 22, 1997),<sup>6</sup> remain in effect, the act of recommending a level fee arrangement that occurs because of the offsetting or rebating of fees does not appear to fit inside the Level Fee Fiduciary rules. As such, many arrangements which are “level” in practice face elimination where Financial Institutions desire to avoid the complex regulatory burdens of the full BIC

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<sup>6</sup> “For example, the adviser can structure the fee arrangement to avoid prohibited conflicts of interest as explained in advisory opinions issued by the Department . . . There is nothing in the final rule that alters these advisory opinions.” 81 Fed. Reg. 20946, 20987 (Apr. 8, 2016); *see also* DOL Adv. Op. 97-15A (May 22, 1997) (“Frost’s contract with a Plan, as described above, will provide that Frost’s receipt of fees from one or more mutual funds in connection with the Plan’s investment in such funds will be used to reduce the Plan’s obligation to Frost, will in no circumstances increase Frost’s compensation, and thus will benefit the Plan rather than Frost.”).

Exemption. The unfortunate result is that the current Level Fee Fiduciary framework has caused unnecessary burdens and compliance costs as Financial Institutions have contemplated and effected transitions from arrangements which are already conflict-free.

Second, the Levelized Fee Exemption provides a principles-based approach to levelization that avoids having the Department choosing between the various forms of levelization in the retirement marketplace. As the Department is well aware, there are different methods of levelization utilized by various Financial Institutions. Some Financial Institutions will charge an “all in” flat dollar or basis point fee for their services that is directly charged against participant accounts. This approach would likely to fall within the Level Fee Fiduciary rules, however, the majority of Financial Institutions do not follow it.

Instead, offsets, fee rebating and similar approaches are far more common in the retirement marketplace. Specifically, the Department’s formal and informal guidance on services and investments, such as the Department’s Target Date Retirement Funds – Tips for ERISA Plan Fiduciaries, has led to broad based unbundling where multiple providers often work in coordination to provide services to a Retirement Investor. In these situations, it is very common that one Financial Institution will rebate funds that it receives from its third party business partners to a Retirement Investor and/or offset its fees to avoid prohibited transactions. These activities result in a level cost to a Retirement Investor with level compensation to the Financial Institution and adviser making recommendations to a Retirement Investor. The Levelized Fee Exemption recognizes that, at the end of the day, the outcome is what matters. Ensuring that advisers do not have the ability to change the timing or amount of their compensation is the key goal. The manner of getting there, as long the goal is met, is not relevant.

Third, the Levelized Fee Exemption solves for the concern that, aside from the ERISA or Code requirements, Financial Institutions and their advisers are not all subject to the same regulatory standards. For example, advisers who are registered representatives of broker-dealers may be limited under applicable SEC guidance in how they can receive compensation such that a fixed assets under management charge may not always be a permissible option. Levelization through innovative market solutions – such as independent third party registered investment advisers or through third party exchange platforms – can be achieved through the principles of the Levelized Fee Exemption.

Fourth, in the BIC Exemption, the Department recognized that certain types of investments (*e.g.*, some annuity products) could require higher levels of specialized expertise and levels of service that would justify higher costs for the investment.<sup>7</sup> The unavailability of the existing Level Fee Fiduciary rules when fees vary across investments unnecessarily impacts the utilization of the diversified set of investment types available in the retirement marketplace. The Levelized Fee Exemption addresses this unnecessary impact on the retirement marketplace.

Fifth, the Levelized Fee Exemption addresses the Department’s RFI questions about the contractual private right of action in two key ways. First, the Levelized Fee Exemption applies

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<sup>7</sup> 81 Fed. Reg. 21002, 21035 (Apr. 8, 2016).

the Department’s previously recognized approach to levelization that has not previously required a contractual right of action, thus operating in a manner consistent with the Department’s prior *Frost National Bank* guidance. Second, by requiring that certain features relating to levelization within certain types of investments only be available to entities subject to FINRA, SEC or state insurance oversight, significant regulatory oversight and remedies for failure to comply are built in to the exemption notwithstanding the fact that a contractual right of action is not included in the Levelized Fee Exemption.

### **C. Components of the Levelized Fee Exemption**

The Levelized Fee Exemption would have four core components:

- The Impartial Conduct Standards;
- A Level Fee;
- Disclosure of Compensation; and
- Special Rules for Investments Protective of Retirement Investors.

#### *1. The Impartial Conduct Standards*

The ARA recognizes that under the final fiduciary rule and related exemptions the Department’s approach has been to utilize the Impartial Conduct Standards on a relatively uniform basis across its broad-based exemptive guidance. As such, the Impartial Conduct Standards are incorporated in the Levelized Fee Exemption.

#### *2. A Level Fee*

As noted above, in the retirement marketplace, a “level fee” can be achieved through a number of methods. Consistent with the definition of Level Fee Fiduciary in the BIC Exemption, the Levelized Fee Exemption would provide that a fee is level if it is provided on the basis of a fixed percentage of the value of the assets or a set fee that does not vary on the basis of a particular investment recommended. Offsetting arrangements, rebating arrangements, and similar structures would all be considered “level fee” if the actual fee received by a Financial Institution net of these arrangements is level. This approach provides a principles based approach for compliance but does not choose one method of levelization over another.

In addition, the Levelized Fee Exemption would provide that a level fee should be determined within each type of investment to the extent that a Financial Institution and Adviser are subject to regulation by FINRA, the SEC or state insurance authorities. Annuities, mutual funds, CITs and ETFs, and fixed income investments would each constitute a separate type of investment. As such, if a plan utilized both annuities and mutual funds, as long as fees were levelized among the mutual fund investments and among the annuity investments, the Levelized Fee Exemption would be available.

#### *3. Disclosure of Compensation*



The ARA recognizes (1) the Department’s focus on ensuring that Retirement Investors receive proper disclosure of the compensation received by their Financial Institution and advisers and (2) the Department’s willingness to simplify the disclosures required under the BIC Exemption. The Levelized Fee Exemption addresses both of these concerns.

To minimize administrative burden, with respect to plans subject to ERISA, the Levelized Fee Exemption’s disclosure requirements will be deemed satisfied if a Retirement Investor is provided the disclosures required by ERISA section 408(b)(2). This approach is consistent with the BIC Exemption’s approach of not requiring a BIC contract for an ERISA plan Retirement Investor because ERISA already provides a remedy.<sup>8</sup> ERISA section 408(b)(2) provides a detailed disclosure mechanism. There is no need to add additional complexity or burden through a new level of disclosure in the Levelized Fee Exemption. With respect to IRAs and other vehicles subject to the final fiduciary rule but not subject to ERISA, disclosures equivalent to those required of ERISA plans subject ERISA section 408(b)(2) would be required to ensure that the Department’s disclosure objectives are satisfied.

#### 4. *Special Rule for Investments Protective of Retirement Investors*

Lastly, there are a number of investments with respect to which it is not practical to levelize fees and would receive relief under the Levelized Fee Exemption. The Levelized Fee Exemption would provide this relief to self-directed brokerage arrangements, cash or money market funds, and company stock. There are several reasons for why these identified investments should be afforded relief under the Levelized Fee Exemption.

- *No Improper Incentives to Utilize These Investments.* There are no improper incentives that would encourage an Adviser to use these investments. Financial Institutions and their advisers do not receive additional compensation when Retirement Investors elect to utilize these investments. In fact, when Retirement Investors elect to utilize these investments, the Financial Institution’s and their adviser’s compensation may actually decline.
- *Lack of Revenue Sharing to Levelize or Offset.* These investments are not structured to provide for revenue sharing or significant fees to an adviser or a Financial Institution. In fact, these investments are generally low (as in the case of money market funds) or even no fee (such as in the case of company stock and cash). As such, it is simply not practical to implement levelization or offsets for these investments.

### **D. Proposed Exemption Language**

#### **(a) *In general***

1. The exemption provides relief from the restrictions of ERISA sections 406(a) and 406(b) and the sanctions imposed by Code sections 4975(a) and 4975(b) for certain transactions in connection with the provision of

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<sup>8</sup> 81 Fed. Reg. 21002, 21008 (Apr. 8, 2016).

investment advice or discretionary investment management to Retirement Investors provided that the following conditions are met:

- (A) When providing investment advice to the Retirement Investor, the Financial Institution and the Adviser provide investment advice that is, at the time of the recommendation, in the Best Interest of the Retirement Investor.
- (B) The recommended transaction will not cause the Financial Institution, Adviser or their Affiliates or Related Entities to receive, directly or indirectly compensation for their services that is in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2).
- (C) Statements by the Financial Institution and its Advisers to the Retirement Investor about the recommended transaction, fees and compensation, Material Conflicts of Interest, and any other matters relevant to a Retirement Investor's investment decisions, will not be materially misleading at the time that they are made.
- (D) Except as provided in Sections (a)(1)(E) and (a)(1)(F) of this Exemption, the Adviser and Financial Institution that provides investment advice receives only a "Level Fee" that is provided on the basis of a fixed percentage of the value of the assets or a set fee that does not vary on the basis of a particular investment recommended. The concept of "Level Fee" shall be broadly interpreted such that any commercially reasonable method of levelization utilized in the marketplace shall be sufficient to constitute a "Level Fee". For purposes of clarity, offsetting arrangements, rebating arrangements, and similar structures are all considered "Level Fee" if the actual fee received by a Financial Institution net of these arrangements is level.
- (E) *Exceptions for Certain Investments.* This Exemption shall also be available for arrangements that do not satisfy Section (a)(1)(D) but that the Department believes are otherwise protective of Retirement Investors. Such arrangements include:
  - (i) *Investments Not Subject to a Fee.* Where the Financial Institution or Adviser otherwise receives a Level Fee but does not receive compensation with respect to specified investment options and programs within the arrangement. Specified investment options and programs means self-directed brokerage arrangements, cash or money market funds, company stock, or any other



investment option that is further described by the Department shall satisfy this section.

- (F) *Levelization Within Types of Investment.* When an Adviser and Financial Institution are subject to the Financial Industry Regulatory Authority, Securities and Exchange Commission, Office of Comptroller of the Currency and/or state insurance agency or commission oversight, this Exemption shall also be available for arrangements where there are multiple investment types utilized so long as there is a “Level Fee” within each investment type. For purposes of this Section (a)(1)(F), an “investment types” shall include annuity contracts, mutual funds, collective investment trusts and exchange traded funds, and fixed income investments. The Department may also establish further classifications of “investment types”.
- (G) *Disclosure of Compensation.* The Adviser or Financial Institution shall provide a description of the compensation to be paid to the Adviser and Financial Institution for investment advice or discretionary investment management. With respect to advice relating to a Plan described in ERISA section 3(3), this requirement shall be deemed to be satisfied by providing the disclosures relating to compensation required by ERISA section 408(b)(2) at the time and in the manner as required under ERISA section 408(b)(2). With respect to advice relating to an IRA, this disclosure requirement shall be satisfied by providing the disclosures relating to compensation that would be required to be provided by ERISA section 408(b)(2) at the time and in the manner as would be required under ERISA section 408(b)(2) if such ERISA section applied to an IRA.

**(b) Definitions**

- (1) “Adviser” means an individual who:
  - (A) Is a fiduciary of the Plan or IRA solely by reason of the provision of investment advice described in ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B), or both, and the applicable regulations, with respect to the assets of the Plan or IRA involved in the recommended transaction;
  - (B) Is an employee, independent contractor, agent, or registered representative of a Financial Institution; and

- (C) Satisfies the federal and state regulatory and licensing requirements of insurance, banking, and securities laws with respect to the covered transaction, as applicable.
- (2) “Affiliate” of an Adviser or Financial Institution means—
- (A) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Adviser or Financial Institution. For this purpose, “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual;
  - (B) Any officer, director, partner, employee, or relative (as defined in ERISA section 3(15)), of the Adviser or Financial Institution; and
  - (C) Any corporation or partnership of which the Adviser or Financial Institution is an officer, director, or partner.
- (3) Investment advice is in the “Best Interest” of the Retirement Investor when the Adviser and Financial Institution providing the advice act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, without regard to the financial or other interests of the Adviser, Financial Institution or any Affiliate, Related Entity, or other party.
- (4) “Financial Institution” means an entity that employs the Adviser or otherwise retains such individual as an independent contractor, agent or registered representative and that is:
- (A) Registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or under the laws of the state in which the adviser maintains its principal office and place of business.
  - (B) A bank or similar financial institution supervised by the United States or a state, or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)));
  - (C) An insurance company qualified to do business under the laws of a state, provided that such insurance company:

- (i) Has obtained a Certificate of Authority from the insurance commissioner of its domiciliary state which has neither been revoked nor suspended,
  - (ii) Has undergone and shall continue to undergo an examination by an Independent certified public accountant for its last completed taxable year or has undergone a financial examination (within the meaning of the law of its domiciliary state) by the state's insurance commissioner within the preceding 5 years, and
  - (iii) Is domiciled in a state whose law requires that actuarial review of reserves be conducted annually by an Independent firm of actuaries and reported to the appropriate regulatory authority;
- (D) A broker or dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or
- (E) An entity that is described in the definition of Financial Institution in an individual exemption granted by the Department under ERISA section 408(a) and Code section 4975(c), after the date of this exemption, that provides relief for the receipt of compensation in connection with investment advice provided by an investment advice fiduciary, under the same conditions as this class exemption.
- (5) “Individual Retirement Account” or “IRA” means any account or annuity described in Code section 4975(e)(1)(B) through (F), including, for example, an individual retirement account described in section 408(a) of the Code and a health savings account described in section 223(d) of the Code.
- (6) A “Material Conflict of Interest” exists when an Adviser or Financial Institution has a financial interest that a reasonable person would conclude could affect the exercise of its best judgment as a fiduciary in rendering advice to a Retirement Investor.
- (7) “Plan” means any employee benefit plan described in ERISA section 3(3) and any plan described in Code section 4975(e)(1)(A).
- (8) “Related Entity” means any entity other than an Affiliate in which the Adviser or Financial Institution has an interest which may affect the exercise of its judgment as a fiduciary.

- (9) A “Retail Fiduciary” means a fiduciary of a Plan or IRA that is not described in section (c)(1)(i) of the Regulation (29 CFR 2510.3-21(c)(1)(i)).
- (10) “Retirement Investor” means:
  - (A) A participant or beneficiary of a Plan subject to Title I of ERISA with authority to direct the investment of assets in his or her Plan account or to take a distribution, and
  - (B) The beneficial owner of an IRA acting on behalf of the IRA, or
  - (C) A Retail Fiduciary with respect to a Plan subject to Title I of ERISA or described in section 4975(e)(1)(A) of the Code or IRA.

The ARA appreciates the ongoing opportunity to work with the Department on these issues of great importance to our diverse membership of retirement marketplace participants. We would welcome the opportunity to discuss these comments further with you. Please contact Craig Hoffman, ARA General Counsel, at [CHoffman@USARetirement.org](mailto:CHoffman@USARetirement.org) with respect to any questions regarding the matters discussed herein. Thank you for your time and consideration.

Sincerely,

/s/  
 Brian H. Graff, Esq., APM  
 Executive Director/CEO  
 American Retirement Association

/s/  
 Robert M. Richter, APM  
 President  
 American Retirement Association

/s/  
 Craig P. Hoffman, Esq., APM  
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/s/  
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**cc:**

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