

August 4, 2017

Via Email to: ESBA.FiduciaryRuleExamination@dol.gov
Office of Exemption Determinations
ESBA (Attention: D-1 1933)
U.S. Department of Labor
200 Constitution Avenue, NW Suite 400
Washington, DC 20210

Re: RIN 12 10-AB82

Dear Sir or Madam:

This letter is written on behalf of American Century Companies, Inc. and its affiliates to respond to the Department's Request for Information (**RIN 1210-AB82**) regarding the Fiduciary Advice Rule, 29 C.F.R. §2510.3-21. We appreciate the Department's willingness to consider proposals for additional exemptions and the opportunity to provide our perspective.

American Century Background. American Century Companies, Inc. is the privately held parent company of American Century Investment Management, Inc., a registered investment adviser which serves as investment adviser to the American Century family of mutual funds ("American Century Funds") and other investment products, and its affiliates, including American Century Investment Services, Inc., a registered broker/dealer and the distributor of the American Century Funds. Through mutual funds and commingled trusts, as well as its sub-advisory and separate account management services, American Century provides investment products for individuals (retirement and non-retirement accounts), retirement plans (including ERISA and non-ERISA plans), and institutions, both directly and through intermediaries.

American Century also has a robust business providing investment solutions to retirement plans of all sizes, including mid-sized plans that are below \$50 million in size. In many cases, American Century is contacted by such plans, either directly or through a request for information/proposal, in which those plans are looking for a fund that fits a specific asset class or has a specific strategy. In those situations, American Century is not analyzing a plan's line up and providing advice about what options would be in the best interests of the participants; instead, we are answering a specific request for information about a specific fund or product. We might provide analysis on why we believe our fund is the most appropriate option of all funds available in that strategy, but we are not evaluating the plan and giving advice on what types of strategies should be available to plan participants. Plans that reach out and request this type of

information/presentation from American Century are not asking for that advice—they are asking for information about a specific product they already have selected.

Overview. We support the idea behind the Fiduciary Advice Rule and agree that investment advice should be in the best interests of the investor, not the advisor. We also support the disclosure of conflicts of interest, particularly if payments to an advisor differ based on the investment options recommended. However, we believe that the Rule as adopted is too broadly drafted and sweeps in activity that is not conflicted. For that reason, we wish to propose an additional exception for DOL's consideration that will apply only to situations where a retirement plan, consultant or recordkeeper contacts a fund provider and asks the provider for information about a specific fund or strategy (the "Specific Request Exception").

The Specific Request Exception. When dealing with retirement plans subject to ERISA that are over \$50 million in assets, it is possible for firms to rely on the "Sophisticated Counterparty" or "Independent Fiduciary" exception. However, when dealing with retirement plans that have less than \$50 million in assets, that exception does not apply. The Best Interests Contract Exemption may be available, but in situations where a smaller plan (or service provider to a smaller plan) has asked a firm to present on a specific fund or strategy, it does not make sense to rely on that exemption. Although the communication from the firm to the plan could be considered a recommendation subject to the Rule, it is unnecessary and inappropriate to ask a firm to do a "best interests" analysis when the information the firm is providing is about a fund or strategy specifically requested by the plan. To address this situation, we propose a Specific Request Exception that would have the following parameters:

1. The firm relying on the Specific Request Exception must rely on it only when responding to (a) a request directly from an ERISA plan, a consultant or advisor serving that plan, or a recordkeeper that services such plans, asking that the firm provide information and/or present to the plan (and any consultant, advisor or recordkeeper) about a product in a specific strategy, or (b) an RFI or RFP requesting information about a product in a specific strategy. For instance, if a firm is requested to provide information and/or a presentation about its target date funds, and no information about other strategies or funds is provided, it may be eligible to rely on the Specific Request Exception.
2. The firm must keep a written record of the specific request received, and such record should be associated with the information, documentation and/or any presentations provided in response to such request.
3. The firm must include a statement in any documentation provided and in any presentation given that such information is provided in response to a specific request from the plan/consultant in question and that no fiduciary advice is being provided.
4. No representatives involved in creating or providing the recommendations shall receive any compensation that is differentiated by the fees of the products recommended or the total revenue received by the firm. Compensation based on the amount invested is acceptable as long as it is product and strategy agnostic and not tied to fees or revenue.

In these situations, it is clear to all parties that the distribution activity being undertaken by the fund firm is in fact selling, not advice. This is a different situation than when a firm conducts a review of a plan's offerings in order to give advice on what an appropriate line up would be. In that case, the firm is evaluating different investment options and making a recommendation as to what options are in the best interests of the plan and its participants. If the firm is recommending its own product, on which it receives fees, compared to other firms' products, there certainly can be a conflict of interest. That conflict does not exist in responding to a specific request from a plan or its advisor. The Specific Request Exception would not cover situations where there is a request for more general advice or options. It would apply only when the requestor already has narrowed down the types of products, and requests information about a specific option or strategy. Because no advice is being given, there is no concern that the firm will be led by a conflict of interest to recommend something that is not in the best interests of the plan. Potential investors should be permitted to ask for, and receive, information about specific investment products without requiring compliance with an exemption that doesn't fit the situation.

We appreciate the opportunity to provide our thoughts and suggestions for this additional exception to the Fiduciary Advice Rule. If you have any questions or would like to discuss this proposed exception, please do not hesitate to contact me at 816-340-7480 or janet_nash@americancentury.com.

Sincerely,



Janet A. Nash
Senior Vice President and
Deputy General Counsel