Via http://www.regulations.gov

April 28, 2015

Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Comment Period for Conflict of Interest Rule and Related Exemptions

Ladies and Gentlemen:

The Financial Services Roundtable ("FSR")[1] hereby requests a 45-day extension of the comment period for the U.S. Department of Labor's (the "Department") proposals regarding the (1) Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice,[2] (2) Best Interest Contract Exemption,[3] (3)

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1 As *advocates for a strong financial future*™, FSR represents the largest integrated financial services companies providing banking, insurance, payment, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

2 DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Definition of Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice* [RIN: 1210-AB32], 80 Federal Register 21928 (Apr. 20, 2015) (the "Re-Proposing Release"), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08831.pdf.

3 DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Best Interest Contract Exemption*, Application No. D-11712 [ZRIN: 1210-ZA25], 80 Federal Register 21960 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08832.pdf.

Principal Transaction Exemption,[4] and (4) related amendments to four existing prohibited transaction exemptions[5] (collectively, the "Proposal").

Although an unofficial version of the Proposal was posted on the Department's website on April 14, 2015, the Proposal was officially published for notice and comment in the April 20, 2015 edition of the FEDERAL REGISTER. Prior to the time that the Department made the Proposal available on its website, FSR did not have any first-hand knowledge of the text of the proposed rule revisions, the proposed prohibited transaction class exemptions ("PTEs"), or the proposed amendments to existing PTEs.

We note that the process of adopting PTEs historically has required lengthy periods of collaboration with the Department, and engagement by the financial services industry to work through the very complicated issues raised by the proposed PTE under the Employee Retirement Income Security Act of 1974;[6] consequently, the entire process to develop new PTEs requires considerable time.[7] The complexity of the

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4 DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Class Exemption for Principal Transactions in Certain Debt Securities between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs*, Application No. D-11713 [ZRIN: 1210-ZA25], 80 Federal Register 21989 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08833.pdf.

5 DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Amendment to Prohibited Transaction Exemption (PTE) 75-1, Part V, Exemptions from Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Broker-Dealers; Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefits Plans and Certain Broker-Dealers, Reporting Dealers and Banks*, Application No. D-11687 [ZRIN: 1210-ZA25] 80 Federal Register 22004 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08836.pdf; DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction Exemption (PTE) 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies and Investment Company Principal Underwriters*, Application No. D-11850 [ZRIN: 1210-ZA25], 80 Federal Register 22010 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08837.pdf; DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction Exemption (PTE) 86-128 for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers; Proposed Amendment to and Proposed Partial Revocation of PTE 75-1, Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks*, Application No. D-11327 [ZRIN: 1210-ZA25], 80 Federal Register 22021 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08838.pdf; and DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Amendments to Class Exemptions 75-1, 77-4, 80-83 and 83-1*, Application No. D-11820 [ZRIN: 1210-ZA25], 80 Federal Register 22035 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08839.pdf.

6 Employee Retirement Income Security Act of 1974, Public Law No. 93-406, 88 STAT. 829 (Sept. 2, 1974) [codified at 29 U.S.C. § 1001 *et seq.*].

7 *See* U.S. CHAMBER OF COMMERCE, USING PTES TO DEFINE A FIDUCIARY UNDER ERISA: THREADING THE NEEDLE WITH A PIECE OF ROPE at 3 (2015) (the "PTE STUDY") (finding that less than two (2) prohibited

PTE régime in general, and the need to evaluate and consider six (6) proposed PTEs associated with the Proposal (two proposed PTEs and proposed amendments to four existing PTEs) in particular will require considerable time and resources from FSR and its members in order to participate fully in the public comment process.

FSR endorses the industry's rationales for extending the initial period for public comment.

Following our respective preliminary reviews of the Proposal, FSR and 15 financial trade associations representing the breadth of the financial services industry in the United States (the "Associations") jointly submitted a letter on April 21, 2015, requesting that the Department extend the initial period for public comment an additional 45 days.[8]

In summary, the Associations' rationales in support of their joint request for an extension of the initial public comment period include:

- The Proposal contains detailed new rules and a new exemption that will subject individual retirement account ("IRA") advisers to increased legal risk for violations of strict prudence requirements under ERISA.
- The Proposal includes a host of detailed changes to existing and widely-used exemptions on which financial institutions rely to provide essential services to American retirement savers.
- Unlike its initial proposal in 2010 to re-define the term "investment-advice fiduciary" (the "Original Proposal"),[9] the Department provided a

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transaction class exemptions were granted in the 20 years following enactment of ERISA, and only one (1) per year has been granted in the prior 20 years), *available at* http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/White-Paper-Using-PTEs-to-Define-a-Fiduciary-Under-ERISA-2.19.15-FINAL.pdf.

[8] The Associations submitting the letter were the American Bankers Association, the American Council of Life Insurers, American Retirement Association, Association of Advanced Life Underwriting, Bond Dealers of America, Financial Services Institute, Financial Services Roundtable, Investment Company Institute, Investment Program Association, Insured Retirement Institute, National Association for Fixed Annuities, National Association of Insurance and Financial Advisors, SIFMA, The National Association of Real Estate Investment Trusts, The Real Estate Roundtable, and the U.S. Chamber of Commerce.

[9] DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., Definition of the Term "Fiduciary," [RIN: 1210-AB32], 75 Federal Register 65263 (Oct. 22, 2010) (the "Proposing Release"), *available at* http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=24328.

more extensive regulatory impact analysis for the Proposal that will require extensive time and resources to review and analyze.

- FSR's members also will require time to assess their respective ability to comply with the conditions of the proposed exemptions—which exemptions are fundamental to the ability of many financial institutions to provide essential services to retirement investors.

- If adopted, compliance with the Proposal will require significant changes in policies, practices, and computer systems, including the development of the mandated website, as well as the production of expansive new disclosure.

FSR endorses the rationales set forth in the Associations' letter, which is attached as "Exhibit 1".

FSR and its members hereby submit additional information in this letter that we believe warrants an initial public comment period of 120 days, and hereby urge the Department to grant the requested extension.

The Proposal makes extensive changes to existing regulations and PTEs under ERISA that will affect a wide-range of financial services providers in the United States.

In examining the Department's processes for developing prohibited transaction class exemptions and individual exemptive relief, a study commissioned by the U.S. Chamber of Commerce concluded that the Department needs substantial periods of

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For example, the Regulatory Impact Analysis in the Proposing Release discussed a 2005 Staff Report prepared by staff of the Office of Compliance Inspections and Examinations ("OCIE") of the Securities and Exchange Commission (the "Commission"), in which the staff hand-picked twenty-four (24) pension consultants out of a total universe of 1,742 registered investment advisers that provide pension consulting services for a "focused" examination by the Commission's staff, which was designed to assess the "risk areas related to pension consulting." SEC. & EXCH. COMM'N, OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS *Staff Report Concerning Examinations of Select Pension Consultants* at 3 (May 16, 2005) (the "OCIE REPORT"), *available at* http://www.sec.gov/news/studies/pensionexamstudy.pdf. The OCIE staff observed that "thirteen consultants had ongoing conflicts of interest, and six consultants had one-time-only or very limited business relationships with money managers during the inspection period." *See,* OCIE REPORT at 6. The OCIE REPORT covered *1.378 percent* (1.378%) of all pension consultants that were registered as investment advisers with the Commission, and the OCIE staff ultimately determined that *0.746 percent* (0.746%) of these consultants had ongoing conflicts of interest.

time to develop PTEs that can address the realities that financial services firms face in endeavoring to ensure that their personnel and activities comply fully with ERISA.[10]

Thus, as has historically been the case, the complexity of the proposed PTE régime will require FSR and its members to devote considerable time and resources to analyze and assess its likely impact, with a view to providing more thoughtful and comprehensive input, so that the PTEs will not lack utility because they are impractical and unworkable.[11]

Over the last several years, U.S. financial institutions have devoted considerable resources to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[12] Accordingly, FSR and its members also will need to assess the interaction of the Proposal with other federal and state laws, and industry rules and regulations that are applicable to each financial institution's ability to conduct business.

For example, a financial institution conducting a securities business would be subject to the regulatory jurisdiction of the Commission, FINRA, and each state or other jurisdiction in which the financial institution conducts a securities business. And to the extent that the business also involves variable annuities, the financial institution would be subject to regulation by insurance authorities of each jurisdiction in which it conducts its variable annuities business.

Thus, FSR and its members need time to assess the interplay of the Proposal with other federal and state laws and industry rules and regulations that are applicable to their respective businesses; existing regulatory framework for securities, insurance, and banking; and the voluminous rules[13] adopted pursuant to the Dodd-Frank Act.[14]

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[10] *See* U.S. CHAMBER OF COMMERCE, USING PTES TO DEFINE A FIDUCIARY UNDER ERISA: THREADING THE NEEDLE WITH A PIECE OF ROPE at 3 (2015) (the "PTE STUDY") (finding that less than two (2) prohibited transaction class exemptions were granted in the 20 years following enactment of ERISA, and only one (1) per year has been granted in the prior 20 years), *available at* http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/White-Paper-Using-PTEs-to-Define-a-Fiduciary-Under-ERISA-2.19.15-FINAL.pdf.

[11] PTE STUDY at 3 (noting that "the [PTE] regime has proven to be (1) lengthy and protracted; (2) burdened with conditions, limitations, and requirements; and (3) generally ineffective in addressing the needs of the employee benefits community").

[12] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, PUBLIC LAW NO. 111-203, 124 STAT. 1376 (July 21, 2010) (the "Dodd-Frank Act").

[13] *See* Commissioner Daniel M. Gallagher, *Rules Applicable to U.S. Financial Services Holding Companies Since July 2010* (Mar. 2, 2015), *available at* http://www.sec.gov/news/speech/2015/financial-services-holding-companies-rules.pdf.

Federal prudential and market regulators (the "Agencies") responded favorably to requests to extend the comment period for major rulemakings, which ensured the full and active engagement by financial institutions that will be materially impacted by proposed regulations.

Following the most recent financial crisis of 2007-2008, Congress passed the Dodd-Frank Act, which provided for the most significant regulations impacting U.S. markets and the financial services industry since the New Deal securities and banking statutes enacted in the aftermath of the Great Depression.

The Agencies were directed to adopt rules and conduct studies individually—and, in some cases, jointly—to implement the Dodd-Frank Act on a compressed timeframe.[15] However, in the exercise of their respective authority, the Agencies have recognized the necessity of providing ample time for the financial institutions that will be impacted materially by post-crisis financial regulations to assess the proposed regulations and engage substantively on the merits with the Agencies.

For example, the Agencies provided the following comment periods for several major rules promulgated pursuant to the Dodd-Frank Act:

- CREDIT RISK RETENTION[16] → NPRM* Dated: Apr. 29, 2011
  Original Comment Deadline: June 10, 2011
  Comment Period Extended to Aug. 1, 2011[17]
  Total Comment Period: 94 Days

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[14] *See* Commissioner Daniel M. Gallagher, *Statement on the Aggregate Impact of Financial Services Regulations* (Mar. 2, 2015) (noting that the agencies that adopted "man of these myriad regulations" did not—and were not required to—conduct a "robust cost-benefit analysis"), *available at* http://www.sec.gov/news/statement/aggregate-impact-of-financial-services-regulation.html.

[15] *See* DAVIS POLK, *Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Enacted into Law on July 21, 2010* at i (July 21, 2010) (estimating that the Dodd-Frank Act required completion of 243 rulemakings and 67 studies over a 6-18 month period).

[16] SEC. & EXCH. COMM'N, Credit Risk Retention, Exchange Act Release No. 64148 [File No. S7-14-11] (Apr. 29, 2011) (a joint rulemaking with the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, Federal Housing Finance Agency, and the Department of Housing and Urban Development), *available at* http://www.sec.gov/rules/proposed/2011/34-64603.pdf.

[17] SEC. & EXCH. COMM'N, Credit Risk Retention, Exchange Act Release No. 64603 [File No. S7-14-11] (June 10, 2011) (a joint rulemaking with the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, Federal Housing Finance Agency, and the Department of Housing and Urban Development), *available at* http://www.sec.gov/rules/proposed/2011/34-64603fr.pdf

▪ VOLCKER RULE[18] →	NPRM Dated: Nov. 7, 2011 Original Comment Deadline: Jan. 13, 2012 Comment Period Extended to Feb. 13, 2012[19] **Total Comment Period: 98 Days**
▪ PROHIBITION AGAINST CONFLICTS OF INTEREST IN CERTAIN SECURITIZATIONS[20] →	NPRM Dated: Sept. 28, 2011 Original Comment Deadline: Dec. 19, 2011 Comment Period Extended to Jan. 13, 2012[21] Comment Period Extended to Feb. 13, 2012[22] **Total Comment Period: 137 Days**

*NPRM means "Notice of Proposed Rulemaking."

By extending the comment periods, the Agencies ensured the opportunity for full and active engagement in the rulemaking by financial institutions that will be materially impacted by the proposed regulations. FSR believes it would be appropriate for the Department to do likewise to ensure that financial institutions and financial professionals that would be impacted by the Proposal have an opportunity for full and active engagement in the rulemaking proceeding.

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[18] SEC. & EXCH. COMM'N, Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with Hedge Funds and Private Equity Funds, Exchange Act Release No. 65545 [File No. S7-41-11] (Nov. 7, 2011) (a joint rulemaking with the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency), *available at* http://www.gpo.gov/fdsys/pkg/FR-2011-11-07/pdf/2011-27184.pdf.

[19] SEC. & EXCH. COMM'N, Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with Hedge Funds and Private Equity Funds, Exchange Act Release No. 66057 [File No. S7-41-11] (Jan. 3, 2012) (a joint rulemaking with the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency), *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-01-03/pdf/2011-33623.pdf.

[20] SEC. & EXCH. COMM'N, Prohibition Against Conflicts of Interest in Certain Securitizations, Exchange Act Release No. 65355 [File No. S7-38-11] (Sept. 28, 2011), *available at* SEC. & EXCH. COMM'N, Prohibition Against Conflicts of Interest in Certain Securitizations, Exchange Act Release No. 66058 [File No. S7-38-11] (Jan. 3, 2012), *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-01-03/pdf/2011-33614.pdf.

[21] SEC. & EXCH. COMM'N, Prohibition Against Conflicts of Interest in Certain Securitizations, Exchange Act Release No. 65942 [File No. S7-38-11] (Dec. 16, 2011), *available at*, http://www.gpo.gov/fdsys/pkg/FR-2011-12-16/pdf/2011-32228.pdf.

[22] SEC. & EXCH. COMM'N, Prohibition Against Conflicts of Interest in Certain Securitizations, Exchange Act Release No. 66058 [File No. S7-38-11] (Jan. 3, 2012), *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-01-03/pdf/2011-33614.pdf.

The Department's own precedent also weighs in favor of granting the requested 120-day initial comment period.

We note that the Department provided a total of 104 days for the public to comment on the Original Proposal. The Proposal, however, is far more complex, includes two new proposed PTEs, proposes amendments to four existing PTEs, and provides a more fulsome regulatory impact analysis of the Proposal. It is both necessary and reasonable to afford the industry a 120-day initial public comment period, in view of the material distinctions previously noted between the Proposal and the Original Proposal.

A comparison of our request for a 120-day comment period for the Proposal *versus* the 104-day comment period for the Original Proposal yields a difference of 16 days. While that marginal increase is only 16 days, this additional time is critical to the ability of FSR and its members to participate fully in the public comment process for this monumental rulemaking proceeding under ERISA.

More recently, the Department provided a 90-day comment period when it solicited information on brokerage windows in participant-directed plans.[23]

Conclusion

FSR hereby requests a 45-day extension of the initial comment period because a 120-day comment period would better enable our members to conduct appropriate diligence within their respective organizations on the likely impact of implementation of the Proposal or any final rule and related PTEs. This analysis would enable FSR and our members to provide the Department our best judgment concerning the Proposal generally, as well as submit technical comments on the text of the proposed rule and PTEs.

As you may be aware, FSR's goal is to promote public policies and regulations that would enable Americans from all walks of life to plan and save for their retirement needs based on their unique circumstances and financial goals.[24] This is a goal that we share with the Obama Administration and the Congress.

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[23] DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMINISTRATION, Request for Information Regarding Standards for Brokerage Windows in Participant-Directed Individual Account Plans [RIN: 1210-AB59], 79 Federal Register 49469 (Aug. 21, 2014) (comment submission deadline of Nov. 19, 2014), *available at* http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=27743.

[24] *See e.g.*, OXFORD ECONOMICS, *Another Penny Saved: The Economic Benefits of Higher US Household Saving* (June 2014), *available at* http://www.oxfordeconomics.com/anotherpennysaved. This research was sponsored by the AARP, the American Society of Pension Professionals & Actuaries, the Aspen Institute, Bank of America Merrill Lynch, Financial Services Roundtable, John

We believe the extension of the public comment period would enable FSR and its members to understand the nuances of the Proposal and provide comments that would enable the Department to ensure that the ultimate form of any investment-advice fiduciary framework would not impede the ability of lower income and middle class Americans (particularly those who historically have lacked access to professional financial advice and services) to have access to the high-quality professional help that our members provide, because a failure to meet this goal would ultimately lead to less retirement savings in the future.

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Hancock Financial, LPL Financial, Natixis Global Asset Management, the New England Council, Putnam Investments, and the US Chamber of Commerce.

Thank you for your consideration of this request, and we look forward to engaging with the Department on this significant retirement security public policy issue. If you have any questions, please contact me at Richard.Foster@FSRoundtable.org or Felicia Smith, Vice President and Senior Counsel for Regulatory Affairs, at Felicia.Smith@FSRoundtable.org.

Respectfully submitted,

Rich Foster

Richard Foster
Senior Vice President and Senior Counsel for Legal and Regulatory Affairs
Financial Services Roundtable

With a copy to:

Mr. Fred Wong
Office of Regulations and Interpretations

Ms. Karen Lloyd
Office of Exemption Determinations

Mr. G. Christopher Cosby
Office of Policy and Research
Employee Benefits Security Administration
Department of Labor

The Honorable Howard Shelanski
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

EXHIBIT 1

Letter Submitted by the Financial Services Roundtable
On behalf of

The American Bankers Association, American Council of Life Insurers, American Retirement Association, Association for Advanced Life Underwriting, Bond Dealers of America , Financial Services Institute, Investment Company Institute, Investment Program Association, Insured Retirement Institute, National Association for Fixed Income Annuities, National Association of Insurance and Financial Advisors, Securities Industry and Financial Markets Association, The National Association of Real Estate Investment Trusts, The Real Estate Roundtable, and the U.S. Chamber of Commerce

Re: Comment Period for Conflict of Interest Rule and Related Exemptions

(April 21, 2015)

Via http://www.regulations.gov

April 21, 2015

Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Comment Period for Conflict of Interest Rule and Related Exemptions

Ladies and Gentlemen:

The American Bankers Association (**"ABA"**),[i] American Council of Life Insurers (**"ACLI"**),[ii] American Retirement Association,[iii] Association for Advanced Life Underwriting (**"AALU"**),[iv] Bond Dealers of America (**"BDA"**),[v] Financial Services Institute (**"FSI"**),[vi] Financial Services Roundtable (**"FSR"**),[vii] Investment Company Institute (**"ICI"**),[viii] Investment Program Association (**"IPA"**),[ix] Insured Retirement Institute (**"IRI"**),[x] National Association for Fixed Income Annuities (**"NAFA"**),[xi] National Association of Insurance and Financial Advisors (**"NAIFA"**),[xii] Securities Industry and Financial Markets Association (**"SIFMA"**),[xiii] The National Association of Real Estate Investment Trusts (**"NAREIT"**),[xiv] The Real Estate Roundtable,[xv] and the U.S. Chamber of Commerce[xvi] (collectively, the **"Associations"**) hereby request a 45-day extension of the comment period for the U.S. Department of Labor's (the "**Department**") proposals regarding the (1) Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice,[xvii] (2) Best Interest Contract Exemption,[xviii] (3) Principal Transaction Exemption,[xix] and (4) related amendments to four existing prohibited transaction exemptions[xx] (collectively, the "**Proposal**").

As the Department is aware, the Proposal comprises a voluminous amount of information and, if adopted, would represent a watershed event touching many facets of the financial services industry. The Proposal contains detailed new rules, a new exemption that will subject IRA advisers to increased legal risk for violations of strict prudence requirements, and a host of detailed changes to existing and widely-used exemptions. The industry will require time to assess its ability to comply with the conditions of the exemptions—which are fundamental to the ability of many financial services companies to continue to provide essential services to retirement investors, but which will require significant changes in policies and practices, as well as the production of expansive new disclosure.

The Associations and their respective members appreciate that, in response to comments received following the release of the predecessor proposal in October 2010 (the **"2010 Predecessor Proposal"**),[xxi] the Department has spent considerable time and effort to incorporate into the Proposal an avenue for advisers and financial institutions to continue to provide services to retirement investors and receive compensation through commission-based arrangements. Consistent with the Department's request, the Associations and their respective members are committed to taking a thoughtful and well-informed approach to commenting on the Proposal. To do so, the Associations and their respective members need sufficient time to carefully analyze and understand the practical implications of the Proposal.

Given the Proposal's breadth and the far reaching modifications that will be required to meet the conditions to the exemptive relief that the Department perceives as important for the protection of the interests of retirement investors, the 75-day comment period does not provide adequate time for the Associations and their respective members to determine whether they can effectively service the needs of retirement investors within the framework presented in the Proposal.

Our concerns with the 75-day comment period are supported by the history of the Proposal. The 2010 Predecessor Proposal (1) was shorter and less complicated than the Proposal; (2) did not include any exemptions, as opposed to the Proposal, which has two new exemptions and amendments to four existing exemptions; and (3) contained an economic analysis that was a fraction as long as the economic analysis regarding the Proposal.[xxii] Yet not only did the Department provide a 90-day comment period with respect to the 2010 Predecessor Proposal, but the Department also recognized that 90 days was insufficient, later adding two additional weeks to the comment period. In connection with the extension, the Department stated:

"We recognize the significance of the proposed rule for plans, participants, beneficiaries and many plan service providers and therefore believe the steps we are announcing today will ensure broad consideration of all the issues and interests in this regulation."[xxiii]

The Associations applauded the Department's decision to establish a 104-day comment period with respect to the 2010 Predecessor Proposal, and to have a hearing and a post-hearing comment period in 2011. In that context, the Associations are very concerned about the much shorter 75-day period provided with respect to a much longer and more complicated Proposal.

For these reasons, we are requesting a 45-day extension of the comment period. The Associations believe that a 120-day comment period would lead to more thoughtful and comprehensive input, which will ultimately increase the possibility for a more workable final rule that would benefit all parties.

Thank you for your consideration of this request, and please do not hesitate to contact Richard Foster at Richard.Foster@FSRoundtable.org or Felicia Smith at Felicia.Smith@FSRoundtable.org if you have any questions.

Respectfully submitted,

Rich Foster

Richard Foster
Senior Vice President and Senior Counsel for Legal and Regulatory Affairs
Financial Services Roundtable

With a copy to:

Mr. Fred Wong
Office of Regulations and Interpretations

Ms. Karen Lloyd
Office of Exemption Determinations

Mr. G. Christopher Cosby
Office of Policy and Research
Employee Benefits Security Administration
Department of Labor

[i] 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.

[ii] The American Council of Life Insurers (**"ACLI"**) is a Washington, D.C.-based trade association with approximately 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums.

[iii] The American Retirement Association has a long and storied reputation that dates back to its founding in 1966 as the American Society of Pension Actuaries. Today its 20,000+ members and four premier retirement industry associations include every type of pension professional – from business owners, actuaries, consultants and administrators, to insurance professionals, financial advisors, accountants, attorneys and human resource managers. While American Retirement Association members come from all corners of the country, representing every part of the industry, they are all united by their belief in and commitment to the private retirement system.

[iv] The Association for Advanced Life Underwriting (**"AALU"**) is the leading organization of life insurance professionals who are a trusted voice on policy issues involving Americans' financial security and retirement savings. The AALU also offers professional development tools and learning opportunities to help members grow their practices. Founded in 1957, the AALU counts more than 2,200 insurance professionals as members. www.aalu.org.

[v] The Bond Dealers of America (**"BDA"**) advocates exclusively on behalf of middle-market and regional securities firms active in the municipal and taxable fixed income markets, both institutional and retail. BDA is headquartered in Washington, DC and is solely focused on the legislative, regulatory and market practice issues impacting our member firms.

[vi] The Financial Services Institute (**"FSI"**) is the advocacy organization for independent financial services firms and the independent financial advisors affiliated with them. Established in January 2004, FSI represents over 100 independent broker-dealer members and more than 37,000 financial advisor members. FSI's mission is to create a healthier regulatory environment for our members through effective advocacy, education and public awareness. Our strategy includes involvement in FINRA governance and constructive engagement in the regulatory and legislative process. For more information, please visit www.financialservices.org.

[vii] As *advocates for a strong financial future*™, FSR represents the largest integrated financial services companies providing banking, insurance, payment, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

[viii] The Investment Company Institute (**"ICI"**) is a leading, global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of $18.1 trillion and serve more than 90 million U.S. shareholders.

[ix] The Investment Program Association (**"IPA"**) was formed in 1985 to provide effective national leadership for the direct investment industry. The IPA supports individual investor access to a variety of asset classes not correlated to the traded markets and historically available only to institutional investors. These include public non-listed REITs (**"NL REITs"**), business development companies (**"BDCs"**), energy and equipment leasing programs, and private equity offerings.

[x] The Insured Retirement Institute (**"IRI"**) is the leading association for the retirement income industry. IRI proudly leads a national consumer coalition of more than 30 organizations, and is the only association that represents the entire supply chain of insured retirement strategies. IRI members are the major insurers, asset managers, broker-dealers/distributors, and 150,000 financial professionals. As a not-for-profit organization, IRI provides an objective forum for communication and education, and advocates for the sustainable retirement solutions Americans need to help achieve a secure and dignified retirement. Learn more at www.irionline.org.

[xi] NAFA is the authority on fixed annuities. Our mission is to promote the awareness and understanding of fixed annuities. NAFA educates annuity salespeople, regulators, legislators, journalists, and industry personnel, about the value of fixed annuities and their benefits to consumers. NAFA's membership represents every aspect of the fixed annuity marketplace covering 85% of fixed annuities sold by independent agents, advisors and brokers. NAFA was founded in 1998 and recently celebrated its 15th year of serving the fixed annuity industry. To learn more, visit www.NAFA.com.

[xii] Founded in 1890 as The National Association of Life Underwriters, the National Association of Insurance and Financial Advisors (**"NAIFA"**) is one of the nation's oldest and largest financial services organizations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members serve primarily the middle or Main Street market. About half of NAIFA-member clients have annual household incomes of less than $100,000. Only about 10 percent of their clients have household incomes in excess of $250,000.

[xiii] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[xiv] The National Association of Real Estate Investment Trusts (**"NAREIT"**) is the worldwide representative voice for real estate investment trusts (**"REITs"**) and publicly-traded real estate companies with an interest 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 residential and commercial real estate.

[xv] *The Real Estate Roundtable* brings together leaders of the nation's top public and privately held real estate ownership, development, lending and management firms with the leaders of major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy. By identifying, analyzing and coordinating policy positions, The Roundtable's business and trade association leaders seek to ensure a cohesive industry voice is heard by government officials and the public about real estate and its important role in the global economy. Collectively, Roundtable members' portfolios contain over 12 billion square feet of office, retail and industrial properties valued at more than $1 trillion; over 1.5 million apartment units; and in excess of 2.5 million hotel rooms. Participating trade associations represent more than 1.5 million people involved in virtually every aspect of the real estate business.

[xvi] The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system. More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large. Besides representing a cross-section of the American business community with respect to the number of employees, major

classifications of American business—*e.g.*, manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

xvii DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Definition of Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice*, [RIN: 1210-AB32], 80 Federal Register 21928 (Apr. 20, 2015) (the **"Re-Proposing Release"**), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08831.pdf.

xviii DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Best Interest Contract Exemption*, Application No. D-11712 [ZRIN: 1210-ZA25], 80 Federal Register 21960 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08832.pdf.

xix DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Class Exemption for Principal Transactions in Certain Debt Securities between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs*, Application No. D-11713 [ZRIN: 1210-ZA25], 80 Federal Register 21989 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08833.pdf.

xx DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Amendment to Prohibited Transaction Exemption (PTE) 75-1, Part V, Exemptions from Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Broker-Dealers; Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefits Plans and Certain Broker-Dealers, Reporting Dealers and Banks*, Application No. D-11687 [ZRIN: 1210-ZA25] 80 Federal Register 22004 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08836.pdf; DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction Exemption (PTE) 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies and Investment Company Principal Underwriters*, Application No. D-11850 [ZRIN: 1210-ZA25], 80 Federal Register 22010 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08837.pdf; DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction Exemption (PTE) 86-128 for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers; Proposed Amendment to and Proposed Partial Revocation of PTE 75-1, Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks*, Application No. D-11327 [ZRIN: 1210-ZA25], 80 Federal Register 22021 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08838.pdf; and DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Amendments to Class Exemptions75-1, 77-4, 80-83 and 83-1*, Application No. D-11820 [ZRIN: 1210-ZA25], 80 Federal Register 22035 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08839.pdf.

xxi DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., Definition of the Term "Fiduciary," [RIN: 1210-AB32], 75 Federal Register 65263 (Oct. 22, 2010) (the **"Proposing Release"**), *available at* http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=24328.

xxii While we appreciate the significantly more extensive economic analysis of the Proposal compared with the insufficient analysis of the 2010 Predecessor Proposal, the Proposal's economic analysis will require extensive time and resources for review and analysis.

xxiii EBSA NEWS (Dec. 22, 2010).