U.S. CHAMBER OF COMMERCE

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Washington, DC 20062-2000
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April 24, 2015

The Honorable Phyllis Borzi
Assistant Secretary
Employee Benefits Security Administration
Attn: Conflict of Interest Rule
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Office of Regulations and Interpretations,
Employee Benefits Security Administration,
Attn: Conflict of Interest Rule,
Room N-5655,
U.S. Department of Labor,
200 Constitution Avenue NW,
Washington, DC 20210

Office of Exemption Determinations,
Employee Benefits Security Administration,
(Attention: D-11713; D-11327; D-11850; D-11820; D-11687; and D-11712)
U.S. Department of Labor,
200 Constitution Avenue NW, Suite 400,
Washington, DC 20210

Re: Request for Extension of the Comment Period for Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice (RIN 1210-AB32); Proposed Best Interest Contract Exemption (ZRIN 1210-ZA25); Proposed Amendment to Prohibited Transaction Exemption (PTE) 75-1, Part V, Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks (ZRIN 1210-ZA25); Proposed Amendments to Class Exemptions 75-1, 77-4, 80-83 and 83-1 (ZRIN 1210-ZA25); 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 (ZRIN 1210-ZA25); 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 Benefits Plans and Certain Broker-Dealers, Reporting Dealers and Banks (ZRIN 1210-ZA25); Proposed Class Exemption for Principal Transactions in Certain Debt Securities between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (ZRIN 1210-ZA25).

Dear Assistant Secretary Borzi:

The U.S. Chamber of Commerce (the "Chamber") is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. The Chamber appreciates the opportunity to comment on the U.S. Department Of Labor's (the "Department" or "DOL") re-proposed Conflict of Interest Rule, the related prohibited transaction exemptions, and the accompanying Regulatory Impact Analysis (collectively referred to as the "Proposal") issued by the Department and published in the *Federal Register* on April 20, 2015, but we request your assistance in making the opportunity to comment meaningful by granting two requests: 1) an extension of the comment period from 75 days to 120 days; and 2) providing a briefing on the Proposal within the first 21 days from the publication of the Proposal in the *Federal Register*.

The Chamber has actively followed the Department's efforts to promulgate a proposed regulation redefining who is a "fiduciary" of an employee benefit plan under the Employee Retirement Income Security Act of 1974 ("ERISA") as a result of giving investment advice to a plan or its participants or beneficiaries. We filed substantive comments on the October 22, 2010 proposed rule and met with Employee Benefits Security Administration ("EBSA") staff to further discuss our concerns. As we review the current Proposal, we anticipate even more substantive and robust comments. Consequently, we believe our request is necessary to provide meaningful, accurate, and complete commentary.

Our request for an extension of the comment period is necessary and wholly reasonable given the wholesale change the Proposal makes to existing regulations, the degree to which it vastly differs from the Department's prior proposal, the complexity of the Proposal, and specifically, EBSA's past practice of providing longer comment periods for other rulemakings. The Proposal is actually seven separate regulatory actions consisting of a proposed rule and its regulatory impact analysis, two brand new exemptions, and amendments to four existing exemptions. In addition to generally requesting comments, the Proposal raises 181 specific issues and questions (including subparts) on which commenters are asked to provide input. The Best Interest Contract Exemption tasks commenters with reviewing well over twice as many issues and questions as are raised in all of the other Proposal documents combined.

Given the structure and complexity of the Proposal, the 75-day comment deadline is simply insufficient and inappropriate. The DOL granted an initial 90-day comment period on the 2010 notice of proposed rulemaking, which was far less complex, had a much shorter regulatory impact analysis, and included no related exemptions. Even in that instance, the Department recognized that 90 days was insufficient and later added two additional weeks to the comment period for a total of 104 days. We also note that for retirement regulations, EBSA has a history of providing comment periods of 90 days for far less complex rulemakings and regulatory actions that were not accompanied by multiple related exemptions. Examples include the following:

- Proposed Rule—Electronic Filing of Notices for Apprenticeship and Training Plans and Statements for Pension Plans for Certain Select Employees
  - Published 9/30/14 with a 90-day comment period.

- Request for Information—Standards for Brokerage Windows in Participant-Directed Individual Account Plans
  - Published 8/21/14 with a 90-day comment period.

- Proposed Rule—Amendment Relating to Reasonable Contract or Arrangement Under Section 408(b)(2)
    - Published 3/12/14 with a 90-day comment period.

- Request for Information—Lifetime Income Options for Participants and Beneficiaries in Retirement Plans
    - Published 2/2/10 with a 90-day comment period.

Moreover, comment periods of 45-days are regularly provided for public input on individual Prohibited Transaction Exemptions ("PTEs") that are far less complex than the class exemptions associated with the Proposal.[1] Based on EBSA's past practice, if the proposed rule and the six related exemptions were published as separate regulatory actions, the public would have a combined total of 360 days to comment on them (45-days for each of the six exemptions and 90 days for the proposed rule and related regulatory impact analysis). EBSA's single, 75-day comment period for the Proposal, all of the related exemptions, and the Regulatory Impact Analysis discredits any notion that the comment period is truly intended to solicit high-quality, meaningful public input that will inform the rulemaking and avoid unintended consequences and related costs that could come with litigation. Based on EBSA's past practices and the nature of the Proposal and all of its components, a single 120-day comment period is still remarkably short, but it is the bare minimum that can be considered a meaningful window in which to develop comments on the myriad elements of the Proposal.

Given the potentially massive changes that may be required under the Proposal and its cumulative impact on retirement plan participants and beneficiaries, we believe that both the DOL and the public would benefit if EBSA prioritized getting this complex rulemaking process completed with as much time as need to work through all the intricate issues raised in the Proposal. To this end, in addition to extending the comment period, we request that DOL staff also provide a briefing on the Proposal

[1] Proposed Exemptions From Certain Prohibited Transaction Restrictions, 78 Fed. Reg. 43930 (July 2013) (45-day comment period); Grant of Individual Prohibited Transaction Exemptions, 75 Fed. Reg. 33333 (June 11, 2010) (45-day comment period).

within 21 days of its publication describing in detail what it intended in the base rule and related exemptions, and how they inter-relate.[2] Doing so will allow commenters to better understand DOL's objective and enable them to provide more meaningful comments targeted towards ensuring a workable rule.

In summary, we believe the regulatory process the DOL engages in to ensure a workable rule that not only protects but empowers investors saving for retirement should include a prompt briefing on the rule, and an extension of the comment period to no less than 120 days. Thank you for the consideration of our request. If you have any questions, please do not hesitate to contact us.

Sincerely,

David Hirschmann
President
Center for Capital Markets
Competiveness

Randy Johnson
Senior Vice President
Labor Immigration and
Employee Benefits

[2] In discussion with experts in this area there is disagreement about how the rule is intended to work. As such, it is impossible to determine the impact of the rule without knowing what the rule does. Moreover, it is difficult to offer constructive comments without knowing how the DOL intends for the rule to work.