



July 21, 2017

Submitted Electronically – [EBSA.FiduciaryRuleExamination@dol.gov](mailto:EBSA.FiduciaryRuleExamination@dol.gov)

The Office of Exemption Determination  
Employee Benefits Security Administration  
Attention: D-11933  
Suite 400  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

NATIONAL  
ASSOCIATION  
OF  
REAL ESTATE  
INVESTMENT  
TRUSTS®  
♦ ♦ ♦  
REITS:  
BUILDING  
DIVIDENDS  
AND  
DIVERSIFICATION®

**Re: RIN 1210-AB82**

Ladies and Gentlemen:

The Public Non-Listed REIT (PNLR) Council of the National Association of Real Estate Investment Trusts (NAREIT) appreciates this opportunity to respond to the Department of Labor’s (DOL or the Department) *Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions*, published in the *Federal Register* on July 6, 2017.<sup>1</sup> The PNL Council<sup>2</sup> previously submitted comments to DOL regarding the Fiduciary Rule on July 21, 2015, September 24, 2015 and April 17, 2017.

**About NAREIT**

NAREIT is the worldwide voice for REITs and real estate companies with interests in U.S. real estate and capital markets. NAREIT’s members are REITs and other real estate businesses throughout the world that own, operate and finance commercial and residential real estate.

NAREIT represents a large and diverse industry including Equity REITs, which own commercial properties, Mortgage REITs, which invest in mortgage securities, REITs traded on major stock exchanges, PNLs and private REITs. U.S. REITs collectively own nearly \$3 trillion of real estate assets and, by making investments in commercial real estate widely available, our

---

<sup>1</sup> Department of Labor, Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions, 82 Fed. Reg. 31278 (July 6, 2017).

<sup>2</sup> PNLs participate at NAREIT through the Public Non-Listed REIT Council (the “PNL Council”), which consists of 38 NAREIT PNL corporate members. The mission of the PNL Council is to advise NAREIT’s Executive Board on matters of interest and importance to PNLs.



1875 I Street, NW, Suite 600, Washington, DC 20006-5413

Phone 202-739-9400 Fax 202-739-9401 REIT.com

approximately 300 REIT members enable all investors – including, importantly, small investors – to achieve what, once, only large institutions and the wealthy could.

REIT-based real estate investment historically has delivered long-term performance and strong dividends for investors. Stock exchange-listed REITs paid out approximately \$55.7 billion and PNLRs paid out approximately \$4.4 billion in dividends during 2016.

### **About PNLRs**

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

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

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

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

### **PNLR Council Urges Delay in the Applicability Date**

The PNLR Council continues to support the Department’s goal of ensuring that financial advisors put the best interests of retirement plans, plan participants and IRA owners first.



However, we remain concerned that the final Fiduciary Rule and Prohibited Transaction Exemptions will serve to detrimentally limit access to the full range of investment products and services available to plans and IRAs, disrupt markets for retirement investment products and services and generate costly litigation. For these reasons, we join the comments submitted by Investment Program Association (IPA), the U.S. Chamber of Commerce, SIFMA and others in urging DOL to further delay the applicability date of certain provisions in the Fiduciary Rule and its accompanying exemptions, including the Best Interest Contract Exemption and Prohibited Transaction Exemption 84-24.

The PNLR Council also believes that additional time will enable DOL to complete the reexamination of the Rule and the related exemptions mandated by the President's February 3, 2017 Memo.<sup>3</sup> Moreover, it will also permit the Department and the SEC—both under new leadership—to coordinate review efforts going forward. Finally, the Council does not believe there would be any corresponding harm or material risk associated with delaying the applicability date of the provisions of the BIC scheduled to become applicable on January 1, 2018.

### **Conclusion**

We urge the DOL to delay the January 1, 2018 effective date to provide the time necessary to complete the reexamination of the Rule mandated by the President's February 3, 2017 Memo and facilitate beneficial coordination between DOL and the SEC.

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

Respectfully submitted,

Executive Committee,  
NAREIT PNLR Council



By: Daniel L. Goodwin  
Chairman, NAREIT PNLR Council  
Chairman, The Inland Real Estate Group, Inc.

---

<sup>3</sup> <https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule>

