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Definition of the Term ‘‘Fiduciary’’; Conflict of Interest Rule—Retirement Investment Advice; Notice of proposed rulemaking and withdrawal of previous proposed rule.

Comment On: EBSA-2010-0050-0204

Definition of the Term Fiduciary; Conflict of Interest Rule-Retirement Investment Advice

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General Comment

I write in qualified support for the Department of Labor's ("Department") newly proposed conflict of interest rules.

I applaud the Department's efforts to protect investors who receive advice when preparing for one of the biggest changes they will face in their lifetimes. Decisions made before and during retirement can be improved with the assistance of good investment advice. But the consequences of poor advice can be irreversable, so extra care must be taken by regulators to ensure certain high standards are maintained.

The Department's proposal represents a step in the right direction, and it is my hope that it will emerge from the public comment period and hearings unchanged. It is, however, a small step in the right direction rather than a large improvement over the current state. Indeed, investors benefit because the proposal expands the conditions under which advisors are deemed fiduciaries and are therefore held to a higher standard of care. But investors also lose because the proposal relaxes the standard of care to which the expanded universe of fiduciaries is held versus the current state. Prior to the proposal, conflicts of interest were mostly prohibited. Now

material conflicts (revenue sharing for example) are acceptable under a "best interest contract" that could become a minor bureaucratic consideration when providing advice regarding IRA or qualified plan assets.

Investors gain by having more advisors held to a fiduciary standard, but they lose as standards are relaxed. Given that, it is hard to see how investors will experience benefits that outweigh the costs of compliance with the proposal - costs that will most certainly be passed along to investors. In a perfect world, the proposal would be strengthened to expand the definition of a fiduciary while maintaining current prohibitions against conflicts of interest. If that isn't possible, it is my hope that the current proposal will be the first of many steps toward providing investors with more protections against conflicts of interest.