

September 24, 2015

Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Conflict of Interest Rule, RIN 1210-AB32
Definition of the Term “Fiduciary”; Conflict of Interest Rule – Retirement
Investment Advice

Ladies and Gentlemen:

We are writing as organizations that strongly support the Department of Labor’s efforts to strengthen protections for working families and retirees by requiring the financial professionals they turn to for retirement investment advice to act in their best interests. The Department’s conflict of interest rule proposal would achieve that goal by closing loopholes in the definition of fiduciary investment advice while simultaneously easing restrictions on the types of compensation financial firms can receive so long as they abide by appropriate regulatory restrictions. Chief among these are requirements to act in the best interests of their customer and avoid compensation and other practices that conflict with that goal. The result is a balanced rule that provides much needed new protections for retirement savers while providing the flexibility necessary to enable well-meaning firms operating under a variety of business models to comply.

We recognize that adjustments to the rule will be adopted before it is finalized to clarify certain provisions and streamline implementation. We are concerned, however, that many of the proposals put forward by industry groups in the name of making the rule more “workable” would significantly reduce the rule’s key investor protection benefits. These include proposals to reopen loopholes in the definition of fiduciary investment advice, water down the best interest standard, and seriously weaken or even eliminate requirements to mitigate conflicts of interest that can lead financial advisers to steer retirement savers into high-cost or high-risk investment products. We urge you to reject such proposals as inconsistent with the interests of retirement investors and as insufficiently protective of the rights of participants and beneficiaries of plans and IRA owners.

Our specific comments follow.

Don’t inappropriately narrow the definition of investment advice

We strongly support the Department’s proposed changes to the definition of investment advice to close loopholes in the definition that have enabled financial firms to evade their responsibility to act in the best interests of their customers when providing retirement investment advice. The broad definition of investment advice proposed by the Department is consistent with the statutory language under ERISA, the securities law definition of investment advice, and the

reasonable expectations of workers and retirees who turn to financial professionals for help with their retirement investments. A number of industry commenters have suggested revisions to the definition that would inappropriately narrow that definition. These include, for example, suggestions to: (1) reintroduce the requirement that there be some sort of mutual agreement that the advice is specifically individualized for or that it is intended to be relied on as unbiased and in the best interests of the advice recipient; (2) extend the seller's carve-out to the retail market; or (3) exclude from the definition rollover recommendations that don't include specific investment recommendations. We urge you to reject these and similar proposed changes, which would, while using different regulatory language, have the effect of recreating the very loopholes the rule is intended to close.

Don't water down the best interest standard or weaken requirements to rein in conflicts of interest

In drafting its proposed rule, the Department loosened restrictions on the types of compensation that firms can receive when providing retirement investment advice. In order to protect against the potential harm to retirement savers from the conflicts of interest associated with these payments, the Department imposed a strong set of investor protections, including first and foremost, an obligation to act in the best interests of the customer. The Department recognized, moreover, that to be effective in constraining abusive conduct, the best interest standard must be backed by meaningful restraints on industry practices that work against customer interests. As such, while it allows firms to receive conflicted compensation, it requires them to take steps to limit or ban other practices that can exacerbate those conflicts, such as setting quotas or paying advisers more to encourage the sale of certain products regardless of whether they represent the best option for the customer.

These requirements, which are crucial to the rule's effectiveness, have received strong push-back from industry groups seeking to maintain the status quo. Some have argued that the portion of the best interest standard that requires advisers to set aside their own interests when determining the best course of action for the customer (the "without regard to ..." language) should be eliminated. Others have objected to the requirement that differential compensation be based exclusively on objective factors. And still others have suggested that conflicts be addressed exclusively through disclosures. We strongly urge you to reject these proposed changes. If financial firms remain free to compensate and reward advisers for recommendations that are not in the customers' best interests, retirement savers are likely to see only minimal benefits from the rule proposal.

Don't create an exemption for advice to "sophisticated" investors

A new issue that emerged during the comment process is a suggestion that there should be a carve out of the rule for "sophisticated" investors so that firms would be free to offer financial advice to these investors without triggering a fiduciary duty. Those who advocate this approach suggest the securities law "accredited investor" definition as an appropriate basis for such an exemption. But it has long been recognized that the existing accredited investor definition, which is based on income and net worth thresholds, does not accurately measure financial sophistication or even the ability to withstand investment losses. Because industry has

successfully resisted efforts to adjust those thresholds for inflation, the definition is almost certain to get less protective in the future as the value of the thresholds continues to erode. It is worth noting, moreover, that the Investment Advisers Act contains no such carve out from the fiduciary protections for any individuals, or even institutional investors. Under the securities laws, investment advisers have a fiduciary duty to all their clients.

While some financially sophisticated individuals may choose to make their own investment decisions, others turn to financial advisers for help. Regardless of their income or net worth, individuals who turn to a financial professional for investment advice deserve the assurance that the advice they receive will be based on their own financial interests, rather than those of the financial professional. This is particularly true in the context of advice about retirement savings, where accounts are tax-subsidized and the decisions made can determine an individual's ability to afford a secure and independent retirement.

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American workers now are responsible for making the investment decisions that will determine their financial well-being in retirement. In doing so, they face a menu of complex, often difficult-to-understand investment options. Many people understandably seek out investment professionals for advice on how to maximize their savings so that they may one day retire with dignity. Tragically, because of loopholes in the current rules, the professionals they turn to for advice may be influenced by financial conflicts of interest and make recommendations that are not in the retirement investor's best interest.

Hardworking Americans lose precious savings when they receive advice to purchase investments with high fees, low returns, and excessive risks. Remedying this situation is critically important to the retirement security of millions of Americans. Importantly, it is small account holders and lower- and middle-income retirement savers who stand to benefit most from closing loopholes and updating the rules. We commend the Department of Labor for your commitment to advancing this rulemaking and urge you to reject recommendations that simply will leave the current situation unchanged.

Sincerely,

American Association of University Women (AAUW)
American Federation of State, County and Municipal Employees
Americans for Financial Reform
Association of University Centers on Disabilities
Center for Responsible Lending
Committee for the Fiduciary Standard
Consumer Action
Consumer Federation of the SE
Department for Professional Employees, AFL-CIO
Fund Democracy
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths,
Forgers, and Helpers

International Union of Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial & Service Workers
Leadership Conference on Civil and Human Rights
Main Street Alliance
Metal Trades Department, AFL-CIO
National Association of Social Workers
National Committee to Preserve Social Security and Medicare
National Council of La Raza
National Organization for Women
National Women's Law Center
Public Citizen
Service Employees International Union
Social Security Works
U.S. PIRG
Wider Opportunities for Women