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U.S. Department of Labor
Employee Benefits Security Administration
Washington, D.C. 20210

RE: United Steelworkers comments on the Employee Benefits Security Administration's proposed rule "Retirement Security Rule: Definition of an Investment Advice Fiduciary" (EBSA-2023-0014).

Dear Assistant Secretary Gomez:

On behalf of the 850,000 members of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers or USW), I write in strong support of the Employee Benefits Security Administration's (EBSA) proposed rule titled "Retirement Security Rule: Definition of an Investment Advice Fiduciary" (EBSA-2023-0014).

The Importance of Retirement Security

As a labor union, we know just how critical retirement security is to every hardworking person. Our members — like millions of Americans nationwide — are by no means wealthy. However, many of them are able to afford a solid middle-class lifestyle because they work long, hard shifts at their jobs, all while having the peace of mind that they will be taken care of in retirement due to our strong negotiated defined benefit (DB), or pension, plans.

Unfortunately, most Americans no longer enjoy the security of a DB plan. The U.S. Bureau of Labor Statistics (BLS) found that in 2019 only 17 percent of non-union workers had access to a DB plan, compared to 79 percent of union workers.[1] This represents a marked shift from only a few decades prior: according to Boston

[1] U.S. Bureau of Labor Statistics, "TED: The Economics Daily – Union workers more likely than nonunion workers to have retirement benefits in 2019", October 25, 2019.

College's Center for Retirement Research, 62 percent of all workers had access to a DB plan in 1983.[2]

Instead, most Americans who participate in a retirement benefit plan do so through a defined contribution (DC) plan. The major difference between a DB and DC plan is that under the former, workers are guaranteed to be paid a certain amount by their employer during retirement, whereas under the latter, their retirement income is based on how much money is available in their savings account.

The very nature of a DC plan means that it is subject to the whims of financial markets: in a boom, workers can see their retirement savings account grow dramatically; however, in times of recession, the reverse can be true, with workers and retirees alike sometimes losing everything in the process. *The Atlantic* reported that as a result of the Great Recession, "the nation's 401(k)s and IRAs lost about $2.4 trillion in the final two quarters of 2008, and the average loss that year for workers who had been on the job for 20 years was, according to one estimate, about 25 percent".[3]

By requiring financial professionals to always act in the saver's best interests, this proposed rule can right many of the wrong incentives currently at play when it comes to retirement investment advice, protecting millions of Americans' hard-earned savings in the process. As such, USW strongly supports EBSA's proposed rule.

Financial Professionals Should Be Stewards — Not Profiteers — of Hard-Working Americans' Retirement Savings

By and large, the volatility in financial markets cannot be eliminated, so a certain amount of financial risk will always be involved in DC-based retirement savings plans. However, what can be controlled is how financial professionals behave when providing investment advice for Americans' retirement portfolios.

Far too often, these financial professionals face a perverse set of incentives when it comes to their investment advice. This exposes everyday Americans' retirement accounts to an unnecessary amount of risk, which history has shown can have devastating consequences.

[2] Boston College Center for Retirement Research, "401(K)/IRA Holdings in 2019: An Update From the SCF", October 2020.
[3] The Atlantic, "The Recession Hurt Americans' Retirement Accounts More Than Anybody Knew", October 16, 2015.

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In the case of retirement savings, these bad incentives have taken the form of financial professionals exploiting loopholes to provide retirement investment advice that enriches themselves, even if it means leaving the saver worse off in the end. For example, currently, one-time pieces of compensated investment advice are often not subject to fiduciary regulations, regardless of how important they are. So, if a worker leaves their job, a financial professional can give them one-off advice to rollover their entire 401(k) account to a certain Individual Retirement Account (IRA), which can generate significant gains to the financial adviser's firm, even if that particular rollover makes the worker worse off.

Another example is that financial professionals can give unregulated one-time compensated investment advice to a company's 401(k) plan sponsor as to which investment options should be offered to its employees — advice that could very well result in the plan sponsor choosing a menu of investment options that benefits the adviser, while leaving the employees with bad options filled with high fees and low performance.

Unfortunately, these two examples are not the exception, but are all too often the rule when it comes to retirement investment advice. According to a 2015 fact sheet from the White House, such conflicts of interest in retirement investment advice cost Americans $17 billion each year.[4]

This significant cost highlights the need for EBSA to reform the retirement advice regulations through this proposed rule. By more comprehensively establishing the circumstances when a financial adviser is deemed a fiduciary, this proposed rule will close many of the current loopholes — restoring confidence and peace of mind to all Americans that the retirement investment advice they receive is truly in their best interest.

Conclusion

In closing, USW appreciates the efforts that EBSA has taken through this proposed rulemaking process. Protecting working Americans' hard-earned retirement savings is of the utmost importance, and EBSA ought to do everything in its power to ensure that occurs. Although USW believes that DB plans are superior to DC plans, we understand that for many (mainly non-union) workers, they do not have a choice in the matter.

[4] Obama White House Archives, "Fact Sheet: Middle Class Economics: Strengthening Retirement Security by Cracking Down on Backdoor Payments and Hidden Fees", February 23, 2015.

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As such, we strongly support efforts to curtail bad behavior by financial professionals who advise Americans about these DC plans. EBSA must ensure that the incentive structures in the system operate in a way that supports — not undermines — savers' best interests. Closing loopholes and preventing financial professionals from giving retirement investment advice when there is a conflict of interest will go a long way toward fixing those bad incentives.

USW urges EBSA to move quickly with this critical rulemaking and issue a final rule as soon as possible. We appreciate the opportunity to weigh in and look forward to partnering together on this important issue.

Sincerely,

Anna Fendley
Director of Regulatory and State Policy

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