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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

RE: RIN 1210-AB32
Proposed Department of Labor Rule on Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice

To Whom It May Concern:

These comments are submitted in response to the proposed regulatory changes to defining who is a "fiduciary" of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA), as well as who is a "fiduciary" of a plan (including an individual retirement account (IRA)) under section 4975 of the Internal Revenue Code of 1986, as a result of giving investment advice to a plan or its participants or beneficiaries.

Retirement security for all is a priority for the Service Employees International Union (SEIU). We represent two million workers and advocate to improve their lives and the lives of all workers. SEIU is the largest healthcare union with more than 1.1 million members including licensed and registered nurses, doctors, lab technicians and nursing home and homecare workers. As the largest property services union, SEIU represents 225,000 workers in the building cleaning and security industries, including janitors, security officers, superintendents, maintenance workers, window cleaners and doormen and women. With more than one million state and local government workers, public school employees, bus drivers, child care providers and university professors, SEIU is the second largest public service union.

A secure retirement is critical to our members and their neighbors.

We support the proposed regulation that defines "fiduciary" under the Employee Retirement Income Security Act.

The current regulations have been in place since 1975. In that time substantial changes have occurred in the retirement security marketplace. Notably, defined benefit pensions are less common, and many individuals solely bear the responsibility of saving for a secure retirement through self-directed IRAs and 401(k)s. These individual plans often require complex financial decisions, and many individuals use financial professionals for advice.

Loopholes in the existing regulations leave individuals vulnerable to advisors who do not act in the best interests of the clients. Last year alone, unnecessary risks and bad investment advice cost Americans as much as $17 billion. Given the shifts that have occurred in the last 40 years since the current fiduciary rules were put in place it is critical that the Department of Labor (Department) update the rules to protect individual savers.

We offer comments on two provisions in the proposed rule:

- We support the Department's decision to extend fiduciary status to advisors who give advice on a one-time basis;
- We support the Department's decision to extend fiduciary status to advisors even if such advice is not the "primary basis" for investment decisions.

Forty years ago the Department issued regulations to clarify who is a fiduciary under ERISA. That 1975 regulation provided that an advisor is a fiduciary if the advice is:

- Rendered on a "regular basis"
- Rendered for a fee, direct or indirect
- Provided pursuant to a mutual agreement, arrangement, or understanding
- Individualized to the plan's particular needs; and
- A "primary basis" for the investment decision.

In general, each of the standards must be met before an advisor is considered a fiduciary. This severely limits ERISA's fiduciary protections and leaves individuals vulnerable to bad actors.

We strongly support the elimination of the "regular basis" and "primary basis" conditions from the determination of whether an adviser meets fiduciary status.

Individuals do not always seek advice on an ongoing or regular basis. The importance, and potential consequence, of investment advice is not diminished if it is given on a one-time basis.

Advisers must always be held to a standard that requires them to act in the interest of their clients when giving advice.

Similarly, clients must be able to trust the advice that is given. Clients should be able to rely on the advice without regard to whether it is viewed as a primary basis or a lesser basis in the decision making.

Financial advisors should be working in the best interest of their clients. It is past time to close the loopholes in the definition of “fiduciary” that allows financial professionals to direct clients to investments that are not in the clients best interests. Millions of Americans who are saving for retirement deserve the protections that will follow once advisers are required to act with the highest standards.

Sincerely,

Peter Colavito
Director of Government Relations
Service Employees International Union