March 17, 2017

U.S. Department of Labor
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
200 Constitution Avenue NW., Washington, DC 20210,

Attention: Fiduciary Rule Examination.

www.regulations.gov

Re: Definition of Fiduciary
RIN 1210-AB79

To Whom It May Concern:

On behalf of the 2.3 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the U.S. Department of Labor's (DOL) proposed extension of applicability date of the "fiduciary" rule.

HCUA supports the goal of this rule to protect investors and encourage all advisors to act in the investor's best interest. Nevertheless, we believe because of the complexity of this rule and the uncertainty about compliance deadlines and applicability, a delay and additional analysis of the fiduciary rule would benefit credit union members.
We agree with the DOL's intent that credit union members, and all consumers, deserve the best possible service when seeking information about financial or retirement plans, or Individual Retirement Accounts (IRA). However, it is important to have rules that encourage and promote retirement savings – rather than potentially chill the ability of credit unions, or other financial institutions, to provide these products and services. HCUA appreciates that the DOL included some of our requested clarifications from the proposed rule stage, in the final rule including some explanations about what is financial education v. advice. We believe these clarifications make clear that credit unions can continue to have broad conversations with their members about financial education, and have the ability to provide general information about opportunities to invest and save. However, more narrowly tailored conversations to a members' specific situation, in which the credit union or credit union employee receives any compensation, including recommendations for rolling over a 401k or retirement plan may not be excluded from coverage of the rule. As an overarching matter, we urge the DOL to consider whether the compliance burdens and current confusion in the market associated with implementing the rule, could harm credit union members if the rule goes into effect on April 10.

There are three situations, in which credit unions are providing products and services, where they could be impacted by the rule, or may have to take on the compliance burden of determining whether they are implicated by the rule.

- *Credit Unions Offering Investment Products and Services through a Third Party*

For a majority of credit unions offering brokerage and investment advisory services, compliance with the Fiduciary rule will not sit at the credit union level because many credit unions offering these services have arrangements with the third party that clearly outline the duties and responsibilities of each party in the arrangement. The third party offering retirement or IRA services in most situations will be responsible for their own compliance with applicable laws and compliance standards, and is usually selling their products directly to members. Notably, most commission based retirement products from CUSOs or other third parties will fall under the rule. Depending on the structure of this arrangement, there are some questions about whether a credit union could be liable for the actions of the third party, which is particularly important since the DOL's final rule creates a private right of action. Class action litigation could sweep in credit unions, as sponsors of these brokers-dealers and investment advisers, if plaintiffs bring an action against multiple parties.

- *Credit Unions could be Impacted is if They Share Employees with a Third Party such as a CUSO.*

Under other less common circumstances, credit unions could be directly swept into this rule if they share employees with a third party such as a broker-dealer or investment adviser. In the case of dual employees, depending on compensation structure and types of interactions the employee is having with members, it becomes less clear that the credit union employee and credit union is exempt from consideration as a fiduciary. Restructuring of these employees or coming into compliance with the fiduciary rule, or qualifying for an exemption, could be a significant burden to a credit union.

- *A Credit Union could be Impacted by the Rule if an Employee is Providing Information about Rolling Over a Retirement Plan into an IRA or other Information that Previously was not Considered Investment Advice.*

As noted, a credit union that gives "advice" in the accordance with the final rule when marketing its retirement investment products and services, including IRA rollovers, may now be deemed a fiduciary under the rule. If a credit union or a credit union employee is receiving compensation in connection with a discussion with a member concerning IRA investments or rollovers, or in connection with marketing or sales, the credit union depending on the circumstances could trigger fiduciary status unless it qualifies for an exemption. The mere task of determining applicability, determining what exemptions could apply, and potentially making changes to policies and procedures could add unnecessary regulatory burdens to credit unions

The DOL Should Delay the Applicability Date of the Rule

As noted, there has been uncertainty surrounding this rule and whether it would go into effect on the applicability date of April 10, 2017. A February 3, Presidential memo indicated that there could be changes to the rule.[1] It was also widely reported that the DOL sent a request to the Office of Management and Budget for a 180-day delay to the rule.[2] Accordingly, many in the credit union industry and financial services industry were relying on at least a 180-day delay for compliance. So as not to unfairly disadvantage those relying on this public information, we urge the DOL to institute at least a 180-day delay to allow time for the credit union industry to understand any changes that are made to the rule, and allow additional time to understand any compliance and applicability complexities associated with the rule. This would also allow time for additional transparency for consumers seeking to understand whether any changes are being made to the rule.

As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

Brad Douglas
President/CEO