

July 24, 2015

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

To Whom it May Concern:

I am writing to request the opportunity to testify on behalf of the Pension Rights Center at the Conflict of Interest Rule Hearing to be held on August 10, 11, 12 and August 13, 2015, if necessary. The Pension Rights Center submitted comments on the proposed Conflict of Interest Rule on July 21, 2015.

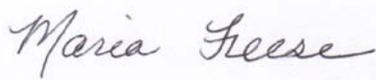
I propose to cover the following topics in my testimony for the Pension Rights Center:

- The current five-part test for determining whether advice on investments is “investment advice” improperly narrows the statutory term, and exempts from fiduciary status individuals whose actions have a direct impact on the retirement security of plan participants.
- The retirement-plan and investment landscapes have undergone significant shifts since the Department adopted the regulations 40 years ago. The proposed regulations reflect the changed investment environment, the emergence of the self-directed defined contribution plan as the primary retirement savings vehicle for most plan participants, and developments in plan design and judicial interpretation of the statute.
- The negative costs of the 1975 Regulations have been substantial: conflicts of interest incentivize investment advisors to recommend investments that maximize fees to the advisors and may not be in the best interests of their clients;
- Comments on proposed regulation:
  - a. Circumstances under which a person render investment advice. A person who provides investment advice should be a fiduciary if, under the totality of circumstances, it appears that a person is giving advice regarding an investment or management decision, regardless of whether there is a bi-lateral, common or shared understanding that thee advice is being provides.
  - b. Sales carve-out. Eliminating the sales exception for individuals is a critically important revision to the proposal and must be maintained.
  - c. The investment education carve-out appropriately limits references to specific investment products.
  - d. The proposed regulations’ inclusion of advice to participants concerning plan distributions and IRAs is essential to protecting the retirement security of America’s workers.

- The proposed Best Interest Contract exemption to the prohibited transaction rules is meticulously constructed and succeeds in mitigating the impact of conflicts while preserving substantial flexibility for financial institutions to market their products and compensate those persons who recommend and sell them. We recommend, however, that the exemption not endorse binding arbitration in the case of employer plans and that it be made clear that the exemption can be used by call centers and to advice on distributions.
- The proposed carve-outs to the definition of investment advisor are appropriate and workable responses to legitimate industry concerns.

If you have any questions, please contact me at [maria@barbarakennellyassociates.com](mailto:maria@barbarakennellyassociates.com) or by phone at (202) 365-8681.

Sincerely,

A handwritten signature in cursive script that reads "Maria Freese". The signature is written in dark ink on a light-colored background.

Maria Freese  
Senior Policy Advisor