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July 20, 2017

Office of Exemption Determinations, EBSA
(Attention: D- 11933)
U.S. Department of Labor
200 Constitution Avenue NW
Suite 400
Washington, DC 20210

Re: Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (Docket ID number: EBSA-2017-0004)

To Whom it May Concern in the Office of Exemption Determinations:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the U.S. Department of Labor's (DOL) Request for Information (RFI) concerning its Fiduciary Rule. CUNA represents America's credit unions and their 110 million members.

CUNA supports the DOL's decision to continue to analyze potential unintended consequences of the Fiduciary Rule, including any detrimental impact it could have on credit union members of modest means seeking investment and retirement savings products. Credit unions support the goal of this rule to protect investors and encourage all advisors to act in the investor's best interest. However, we believe because of the complexity of this rule and the uncertainty about compliance deadlines and applicability, a more clear-cut timeline for delay and additional analysis of the Fiduciary Rule would benefit credit union members.

Credit unions exist to serve their members, and inherent in the credit union movement and member-ownership structure is the motivation to act in a member's best interest. Credit unions offering investment services to their members aim to help American families of all means receive information about saving for retirement and planning for their future. While many large investment firms seek high net-worth clients, credit unions seek to provide services to their members in all financial situations and to make it easier for these individuals to map out financial plans. Working with their local credit union to achieve long-term financial goals, or to save for education or unplanned health emergencies, is an important option for 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 (IRAs). 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. CUNA appreciates that the DOL included some of our requested clarifications from the proposed rule stage in the final rule, including explanations about what is financial education versus advice. We believe these clarifications show that credit unions can continue to have broad conversations with their members about financial education, and also provide general information about opportunities to invest and save. However, more narrowly tailored conversations to a member's specific situation, in which the credit union or credit union employee receives certain compensation associated with information about the rollover of a 401k or retirement plan, may not be excluded from coverage of the rule. We continue to believe that further analysis about whether these new requirements could curtail credit unions and credit union service organizations (CUSOs) from serving members with investment products and services would be beneficial to consumers.

Background on Compliance Deadlines and Changes

A Presidential Memorandum released on February 3 indicated there could be changes to the Fiduciary 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 stakeholders in the financial services industry were relying on at least a 180-day delay for compliance. However, on April 7, 2017, the DOL promulgated a final rule extending the applicability date of the Fiduciary Rule by 60 days from April 10, 2017, to June 9, 2017. It also extended from April 10 to June 9, the applicability dates of the Best Interest Contract (BIC) Exemption and Principal Transactions Exemption, and required investment advice fiduciaries relying on these exemptions to adhere only to the Impartial Conduct Standards as conditions of those exemptions during a transition period from June 9, 2017, through January 1, 2018. Furthermore, the DOL established a phased implementation period from June 9, 2017, until January 1, 2018, during which time the Fiduciary Rule will be applicable, and these new exemptions will be available subject to the Impartial Conduct Standards only.

The final rule further delayed the applicability of amendments to an existing exemption, Prohibited Transaction Exemption 84-24, until January 1, 2018, other than the Impartial Conduct Standards which will become applicable on June 9, 2017. Finally, the final rule extended for 60 days, until June 9, 2017, the applicability dates of amendments to other previously granted exemptions. On May 22, 2017, the DOL issued a temporary enforcement policy covering the transition period between June 9, 2017, and January 1, 2018.

Credit unions have concerns that this continually evolving timeline for coming into compliance with the DOL Fiduciary Rule has created confusion for CUSOs and credit unions determining applicability of the rule. The staggered and evolving timelines for compliance are complex for both consumers and those determining compliance with the rule. Furthermore, it is also not entirely clear what impact the additional requests for information from the DOL and the research required by the Presidential Memorandum will have on the rule and its applicability. As such, we

¹ Presidential Memorandum on Fiduciary Duty Rule, available at <https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule> (Feb. 3, 2017).

² InvestmentNews, *Labor Department seeks 180-day delay of fiduciary rule: Reports*, available at <http://www.investmentnews.com/article/20170210/FREE/170219998/labor-department-seeks-180-day-delay-of-fiduciary-rule-reports> (Feb. 10, 2017).

urge the DOL to delay the applicability dates of all parts of the rule until the research about unintended consequences is completed and any decisions about changes to the rule are finalized.

Credit Unions Provide Retirement and Investment Products and Services to Their Members in All Financial Situations

Credit unions provide various products and services to allow for investment opportunities for members in all financial situations. Under the final rule, any person who renders investment advice for a fee or other compensation, direct or indirectly, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, is considered a fiduciary. Accordingly, credit unions providing these services may have to examine each individual product they offer and the specific compensation structure, marketing materials, and types of communications associated with it at the credit union. Notably, working with outside counsel or providers to understand whether this rule could apply is a compliance burden alone, and coming into compliance with the rule or an exemption to it can be an especially significant compliance burden. Uncertainty about the timelines for compliance and whether changes would be made to the rule over the past several months has also contributed to the complexity for credit unions in determining when and how to comply with the rule.

The DOL Should Clarify that Credit Unions are Exempt from the Fiduciary Rule

The RFI is seeking public input on specific ideas for possible new exemptions or regulatory changes based on recent public comments and market developments. Specifically, the RFI notes that, “some commenters have raised questions about the compliance burden under the rule and PTEs on small community banks that currently do not exercise any fiduciary functions for customers when their employees discuss opening IRAs or investing their IRAs in bank deposit products such as CDs. Some have also raised questions about the need for a special rule for cash sweep services. Still others have said that health savings accounts (HSAs) merit a special exclusion or streamlined exemption because they tend to be invested in shorter-term deposit products to pay qualifying health expenses.”

As CUNA has outlined in several previous letters to the DOL, the compliance burdens associated with this rule are inappropriate for financial institutions, such as member-owned credit unions, which are seeking to provide a wide variety of products and services to consumers of all means to help with planning and saving for the future.³ Any ambiguity and uncertainty in this area could unnecessarily cause smaller and less complex financial institutions, such as credit unions, to curtail offering consumer friendly investment products. While large brokerage firms and Wall Street banks may primarily target high net-worth clients with investment products, credit unions can be serving consumers who may have fewer options and less information about opportunities

³ Credit Union National Association Letters to the Department of Labor Concerning the Fiduciary Rule, *available at* <https://www.cuna.org/Legislative-And-Regulatory-Advocacy/Track-Regulatory-Issues/Pending-Regulatory-Changes/2017/DOL-Fiduciary-Rule-Delay/>; <https://www.cuna.org/Legislative-And-Regulatory-Advocacy/Track-Regulatory-Issues/Pending-Regulatory-Changes/2015/Comment-on-DOL-Fiduciary-Hearing-Transcript/>; and <https://www.cuna.org/Legislative-And-Regulatory-Advocacy/Track-Regulatory-Issues/Pending-Regulatory-Changes/2015/Dept--of-Labor-Proposal-to-Define-Fiduciary/>.

to save and invest. Making it more difficult to provide credit union members with these options is counter-productive to the intent behind the rule. Accordingly, we urge the DOL to provide further clarification that credit unions are not the target of this rule, and provide any necessary carve-outs to ensure that their ability to provide information about consumer-friendly product offerings is not impacted.

Thank you for the opportunity to comment on this RFI. If you have questions concerning our letter, please feel free to contact me.

Sincerely,

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