



July 27, 2017

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

RE: RIN 1210-AB82; Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions

To Whom It May Concern:

The Credit Union Association of the Dakotas (CUAD) appreciates the opportunity to provide comment to the U.S. Department of Labor (Department) regarding its request for information regarding the fiduciary rule and prohibited transaction exemption. To provide a brief background, the Credit Union Association of the Dakotas represents 67 state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total over \$6 billion and who have more than 450,000 members.

CUAD supports consumer protections for retirement investors, however, we are concerned that the Department's final rule limits options to affordable products many consumers find at their local credit union. CUAD urges the Department to clearly exclude credit union deposit products from the scope of this rule. This final rule needs to be reconsidered and revised to ensure that it does not harm credit union members seeking to find affordable products and services at their credit union.

Preserving access to affordable product and services for consumers is the utmost goal for credit unions. Credit unions strive to serve their communities and their members by ensuring their members have access to a variety of products and services. Credit unions are not-for-profit cooperative financial institutions that are owned by their members. Credit unions operate with their members' best interests in mind. The Department's final rule unnecessarily placed new burdensome rules and regulations on credit unions that offer IRAs, health savings, and education saving products to their membership. This final rule jeopardizes the future of these products at some credit unions who may not be able to afford the increased regulatory burden and therefore will choose to discontinue offering these products.

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In the Department's final rule issued April 8, 2016, the Department broadened the definition of fiduciary which has created confusion for credit unions that offer their members affordable access to savings products. The final rule covers investment advice which is defined as a recommendation to a plan, plan fiduciary, plan participant and beneficiary, IRA, or IRA owner for a fee or other compensation, direct or indirect. Compliance concerns range from what can and cannot be said to members when they approach a credit union staff with questions about an IRA offered at the credit union, to what "indirect compensation" encompasses.

The Federal Credit Union Act (FCU Act) and rules and regulations adopted by the National Credit Union Administration (NCUA) limit the role federal credit unions (FCU) have in tax-advantaged savings plan. 12 CFR 724.1 provides that, "A federal credit union is authorized to act as trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States and forming part of a tax-advantaged savings plan which qualifies or qualified for specific tax treatment under sections 223, 401(d), 408, 408A and 530 of the Internal Revenue Code (26 U.S.C. 223, 401(d), 408, 408A and 530), for its members or groups of its members, provided the funds of such plans are invested in share accounts or share certificate accounts of the Federal credit union. Federal credit unions located in a territory, including the trust territories, or a possession of the United States, or the Commonwealth of Puerto Rico, are also authorized to act as trustee or custodian for such plans, if authorized under sections 223, 401(d), 408, 408A and 530 of the Internal Revenue Code as applied to the territory or possession under similar provisions of territorial law. All funds held in a trustee or custodial capacity must be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over such trust or custodial accounts. The federal credit union shall maintain individual records for each participant which show in detail all transactions relating to the funds of each participant or beneficiary."

North Dakota has adopted similar rules for state chartered federally insured credit unions which provides, "A credit union is authorized to act as trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement forming part of a pension plan which qualifies or qualified for specific tax treatment under section 401(d) or 408 of the Internal Revenue Code, for its members or groups or organizations of its members, provided the funds of such plans are invested in share accounts or share certificate accounts of the credit union. All funds held in a trustee or custodial capacity must be maintained in accordance with applicable laws and rules and regulations. The credit union shall maintain individual records for each participant which show in detail all transactions relating to the funds of each participant or beneficiary." *North Dakota Administrative rules 13-03-10-01*



For both federal credit union and North Dakota state chartered credit unions, the funds of such plans must be invested in share accounts or share certificate accounts of the credit union. The Department should exempt plan funds that are invested in the share account or share certificate accounts of credit unions regardless of direct or indirect compensation earned.

With regard to FCU, 12 CFR 724.2, further restricts a FCUs involvement in self-directed plans. The regulations provide that, “A federal credit union may facilitate transfers of plan funds to assets other than share and share certificates of the credit union, provided the conditions of §724.1 are met and the following additional conditions are met: (a) All contributions of funds are initially made to a share or share certificate account in the Federal credit union; (b) Any subsequent transfer of funds to other assets is solely at the direction of the member and the Federal credit union exercises no investment discretion and *provides no investment advice* with respect to plan assets (i.e., the credit union performs only custodial duties); and (c) The member is clearly notified of the fact that National Credit Union Share Insurance Fund coverage is limited to funds held in share or share certificate accounts of NCUSIF-insured credit unions.” [Emphasis added.]

Consumers benefit when credit unions can offer a full range of products and services to their members, including products to help families save for retirement and other purposes. Any unnecessary compliance burdens or uncertainty in this area for credit unions is not helpful to consumers. CUAD strongly encourages the Department clearly exempt plans and IRAs that are invested in the share account or share certificate accounts of credit unions, regardless of direct or indirect compensation earned.

Thank you for this opportunity to share our comments.

Respectfully,

A handwritten signature in black ink that reads "Jeffrey Olson". The signature is written in a cursive, flowing style.

Jeffrey Olson
CEO/President

A handwritten signature in black ink that reads "Amy Kleinschmit". The signature is written in a cursive, flowing style.

Amy Kleinschmit
VP of Compliance