

Submitted via email: *e-ORI@dol.gov*

September 21, 2015

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

RE: Conflict of Interest Proposed Rule, Related Exemptions and Regulatory Impact
Analysis Hearing

Dear Sir or Madam:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the transcript from the United States Department of Labor's (DOL) hearing concerning the proposed regulation defining a "fiduciary" of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA), which adds brokers and advisers providing advice to Individual Retirement Accounts (IRA) to the definition. CUNA represents America's credit unions and their more than 100 million members.

CUNA thanks the DOL for holding four days of hearings to listen to additional commentary about its proposed rule. We appreciate that DOL officials provided explanations and answered questions during the hearing, and that the agency reopened the timeframe to consider comments on the hearing transcript. This thorough consideration about the consequences of this proposed rule is important for all stakeholders impacted by it. CUNA urges the DOL to consider the concerns voiced by several participants of the hearing. Specifically, we urge the DOL to engage in additional analysis about the impact the proposed rule would have on the ability of working-class families to participate in retirement and savings plans. As participants at the hearing noted, the rule in its current form is overly complicated, and will likely have the effect of limiting opportunities for education about retirement and savings plans.

As CUNA noted in our previous comments, we have specific concerns about the impact this rule could have on credit unions and their members even though in most instances compliance with this DOL proposal should not sit at the credit union level. Credit unions offering investment services have arrangements with third party brokers in which they 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. However, questions remain about whether the proposed rule could sweep in credit unions and their employees because of their interactions with these third parties. Such interactions may occur

because credit unions are required to conduct due diligence to ensure any third party arrangement and practice has proper controls in place, and they must have reasonable belief that the third parties' practices are compliant. As we noted in our comment letter, there is also a question of whether credit unions could be directly swept into this rule if they share employees with a broker dealer.

Since the rule has such a broad scope, we have concerns that credit unions could be swept into some of the newly proposed requirements. This is concerning because the compliance burdens for those who will qualify as ERISA fiduciaries are significant, and small or medium size credit unions could be hesitant to engage in any activity that may require compliance with this complex and expansive proposed rule. This could preclude credit unions from offering investment services through a third party. Accordingly, the DOL must more narrowly tailor the definition of "investment advice" to ensure that credit union employees, who are only tangentially involved in providing investment services are not covered by the rule.

There continues to be significant deliberation about the DOL's proposed rule. This is evident by the four days of hearings, the volume of additional information and written testimony submitted after the regular comment period, and the scrutiny Congress has placed on this proposed rule through both Congressional hearings and in formal letters. Despite valiant efforts by the DOL to create rules which will improve the consumer experience when investing, it is clear that the strong opposition, fears voiced, and the unanswered questions posed about the proposed rule must be more closely examined and addressed before the agency can move forward with a rulemaking.

Discouraging Credit Unions from Offering Investment Services is Detrimental to Consumers

At the hearing, other organizations representing financial institutions posed similar questions as those raised by CUNA about how this proposed rule could affect customers and members of financial institutions. While the impact on financial institutions and their members is only a small part of the debate over this rule, it is significant for the many Americans who look to these institutions for support in learning about retirement and savings options. We urge the DOL to further study how credit unions and other financial institutions will be impacted by the rule, and to consider reissuing a more narrowly tailored proposed rule, which is less detrimental to members and customers.

As we noted in our comment letter, we are particularly concerned about the impact this proposed rule will have on credit unions because they often serve a different demographic than some of the conglomerate investment firms. When providing investment services to their members, credit unions 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 to make it easier for these individuals to map out financial plans.

CUNA strongly agrees that credit union members, and all consumers, deserve the best possible service when seeking information about retirement plans or IRA distributions. However, it is important to have rules that encourage and promote retirement savings—rather than potentially

impede the ability of credit unions, or other financial institutions, to provide these products and services. As illustrated throughout the four days of hearings, the DOL's proposed rule is full of complexities and unworkable solutions that must be resolved to assure that the very people this rule is intended to help are not inadvertently harmed.

As outlined in detail in our comment letter, CUNA encourages DOL to examine how the following could negatively affect consumers' access to retirement and other investment services:

- The overly broad consideration of what is considered "investment advice"
- The overly prescriptive requirements surrounding what constitutes compensation
- The problematic "sellers carve-out"
- How "the Best Interest Contract Exemption" will work at financial institutions

Regulatory Overlap is Problematic for Credit Unions

Many participants at the hearing and commenters shared CUNA's concerns about the regulatory overlap that is likely to occur if the proposed rule is finalized in its current form. This concern was even voiced by other regulators at both the Financial Industry Regulatory Authority (FINRA) and the Securities and Exchange Commission (SEC) in their comment letters. As CUNA previously noted, credit unions are supervised by the National Credit Union Administration and the Consumer Financial Protection Bureau if they have \$10 billion or more in assets, and state-chartered credit unions are regulated at the state level. Furthermore, FINRA and the SEC already require specific licenses and compliance with certain laws for registered brokers, insurance agents, and investment advisors in credit unions. Any additional oversight in this area is unnecessarily duplicative and could be burdensome to credit unions who are already facing a multitude of regulatory hurdles.

The responsibilities associated with being an ERISA fiduciary would require expensive and time-consuming compliance training for credit unions, during a time when they are facing an unprecedented number of regulatory burdens. We believe it is important that credit unions are able to offer a full range of products and services to their members, including products to help families save for retirement and other purposes, without being swept into a rule aimed at financial advisors. Any ambiguity and uncertainty in this area could cause financial institutions to exit or not join this market.

The reduction of any unnecessary regulatory hurdles, either intended or unintended, is important for the livelihood of credit unions. Thank you for the opportunity to comment on the hearing transcript. If you have any questions concerning our letter, please feel free to contact me.

Sincerely,

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