

Cooperative Credit Union Association

Delaware • Massachusetts • New Hampshire • Rhode Island

Creating Cooperative Power

August 6, 2020

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
c/o Office of Exemption Determinations
Employee Benefits Security Administration
200 Constitution Ave., NW
Washington, D.C. 20210

BY EMAIL ONLY AT WWW.REGULATIONS.GOV

Docket ID Number: EBSA-2020-0003
Application No. D-12011

Dear Secretary Scalia:

On behalf of the Delaware, Massachusetts, New Hampshire and Rhode Island member credit unions of the Cooperative Credit Union Association, Inc. (“Association”), please accept this letter in general support of the U.S. Department of Labor’s (“DOL”) Employee Benefits Security Administration’s (“EBSA”) proposal to update its fiduciary rule. The Association is the state trade association representing credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island, serving approximately 200 credit unions which further serve over 3.6 million consumer members.

The proposal, *Improving Investment Advice for Workers & Retirees*, creates a new prohibited transaction class exemption that would be available for investment advice fiduciaries (“Proposed Rule”).¹ The exemption applies to credit unions, registered investment advisers, broker-dealers, their employees, agents, representatives that are investment advice fiduciaries, and others. The

¹A class exemption is set forth under the Proposed Rule from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended, (“ERISA”), and the Internal Revenue Code of 1986, as amended, (“Code”). The prohibited transaction provisions of ERISA and the Code generally mandate that fiduciaries, with respect to employee benefit plans (“plans”) and individual retirement accounts and annuities (“IRAs”), cannot engage in self-dealing or receive compensation from third parties in connection with transactions involving the plans and IRAs. The provisions also prohibit purchasing and selling investments with the plans and IRAs when the fiduciaries act on behalf of their own accounts, referred to as principal transactions. This proposed exemption would allow investment advice fiduciaries under both ERISA and the Code to receive compensation, including as a result of advice to roll over assets from a plan to an IRA, and to engage in principal transactions, that would otherwise violate the prohibited transaction provisions of ERISA and the Code.

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Association understands that the exemption includes protective conditions designed to safeguard the interests of plans, participants and beneficiaries, and IRA owners. The new class exemption would also affect participants and beneficiaries of plans, IRA owners, and fiduciaries with respect to such plans and IRAs. In essence, the exemption would permit credit unions and others who provide fiduciary investment advice to retirement investors to receive otherwise prohibited compensation and engage in riskless principal transactions and certain other principal transactions.

Credit Unions Have A Vested Interest in Strong Fiduciary Standards

As a preliminary policy statement, it is without question that the Association acknowledges and supports the goal of the Proposed Rule to protect investors. Furthermore, local credit unions agree with DOL's intent that credit union members, and all consumers, deserve the best possible service when seeking information about financial or retirement plans. Members have overwhelmingly indicated time and again that trust is the top reason for selecting and using an investments provider.² By structure, credit unions are owned and governed by their members and therefore abide by the management philosophy of their owners: to act in their best interests. The interrelationship of governance, ethics, and informed decision making directly informs the credit union mission and is the motivation to act in the member's best interest.

The one vote, one-member governance structure requires credit unions to treat all members equally regardless of net worth. From products offered to financial education, credit unions serve members in all financial situations and life cycles utilizing a variety of networking arrangements to offer investment adviser services to members. Some have clearly defined arrangements with third-party brokers, outlining duties and responsibilities, and others share employees with a broker-dealer. All foster the wholistic nature of offering investment services as complementary to existing products and services based on the primary financial services needs and demands of members. The nature of this business decision, made by member-elected boards of directors, is distinguished from a for-profit motive driven by other financial service providers. The practical result is that the ability of credit unions throughout the member states of the Association to offer such plans are well established, common and popular, yet overwhelmingly and notably small.³ This observation is particularly true in light of the vast size of the broader industry, within which the Northeast area is a dominant provider. It also should be noted that for plans offered, local credit unions are further distinguished as providers receiving high marks from members for quality service.

² [Members Place Trust in Their Advisors | Credit Unions](https://www.creditunions.com/articles/members-place-trust-in-their-advisors/#ixzz6B6wAUaLH)

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³ Since 1948, the statutory provisions in Massachusetts recognize the formation of a credit union retirement benefit provider, the Credit Union Employees Retirement Association, to provide retirement benefit services to employees of credit unions, their members and beyond. M.G.L. c. 171, s. 82. In addition, the Association maintains a longstanding strategic alliance with CUNA Mutual Group, the nation's leading provider of financial products and services to credit unions and credit union members.

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The Association notes that the proposed exemption will allow credit unions to continue to serve their members with plans, will allow for a more diverse range of investment advice to be provided to members, and will ensure that such advice is in their best interest. As a result, the proposed exemption will also assist working families and retirees by preserving a wide availability of investment advice arrangements and products for retirement investors available from their preferred financial institution, credit unions, with flexibility and without interruption.

It is with this background that the following comments in support, as well as suggestions for additional consideration, of the Proposed Rule are offered:

Best Interest Standard of Conduct Supported

Credit unions applaud the DOL's clear inclusion of the best interest standard in the Proposed Rule. The value of the consistency and clarity it provides cannot be overstated. This standard is the guiding foundation that credit unions use to structure their programs and to protect members. As the roadmap aligned with the conduct standards in the Securities and Exchange Commission's Regulation Best Interest and the fiduciary duty of registered investment advisers under securities laws, the Proposed Rule helps to promote the synergy within the standard of care landscape. At every opportunity, the Association and credit unions have urged regulators to follow the path incorporated by the DOL in the Proposed Rule.⁴ The Association strongly supports the inclusion of the best interest standard in the Proposed Rule.

Status as an Investment Advice Fiduciary Clarity Requested

The Association acknowledges the potential value of an independent, five-prong test to determine fiduciary status. Such a process could confirm whether a person can render investment advice under ERISA to a consumer most in need and seeking such guidance. However, the Association questions its ease of use and scope, consistency with prior judicial rulings, as well as its interplay with the exemption and the Proposed Rule. Massachusetts credit union members seek to unilaterally rely on a final, clear exemption found within the Proposed Rule, but may ultimately be losers if they are unable to do so as they find that a test and final rule are too rigid or complex. Consumer protection is a top priority and credit unions will embrace a cautious compliance approach, and in all circumstances, seek to avoid a reduction in or lack of plan choices in the marketplace.

The Association also suggests that clarity from the DOL in the finalization of the Proposed Rule will be helpful for credit unions to confirm that a common platform used within the industry, pooled plan providers for pooled employer plans, may rely on the proposed exemption. Finally, it is also suggested that persons providing fiduciary advice for rollover investments from an employee benefit plan to an IRA should be able to rely on the proposed exemption as well.

⁴ Cooperative Credit Union Association, Inc. Comments on Proposed Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Requirements to Massachusetts Secretary of State William Galvin, July 26, 2019, and January 15, 2020.

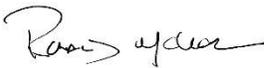
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Credit Union Focus Group Requested/Educational Opportunity Offered

The Association offers its assistance to the DOL to avoid any unintended consequences that any final fiduciary standard of care exemption rule may pose to smaller providers of investment services and retirement plans. Eradicating possible confusion which may arise during the implementation of any new rulemaking, as well as streamlining regulatory education and oversight, are tools available from the Association to help by coordinating a credit union focus group or joint educational endeavor led by the DOL. Credit unions' share the goals of the DOL for smooth implementation to promote public confidence, consumer protection and choice.

The Association respectfully asks the DOL to carefully consider issues presented in this letter so that retirement options and services will remain safe for working families and retirees served by credit unions. Thank you for the opportunity to share credit union views on the Proposed Rule. If you have any questions about the recommendations set forth in this comment letter or require further information, then please do not hesitate to contact me at govaff-reg@ccua.org.

Sincerely,



Ronald McLean
President/CEO
Cooperative Credit Union Association, Inc.

RM/mac/kb