



April 17, 2017

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Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Definition of the Term "Fiduciary" – Reconsideration of Rule, RIN
1210-AB79

Dear Sir or Madam:

The American Federation of State, County and Municipal Employees ("AFSCME") is the largest union in the AFL-CIO, representing 1.6 million state and local government, health care and child care workers. AFSCME members participate in over 150 public pension systems whose assets total over \$1.7 trillion. In addition, the AFSCME Employees Pension Plan is a long-term shareholder governed by the Employee Retirement Income Security Act that manages \$1 billion in assets for its participants, who are staff members of AFSCME and its affiliates.

We are writing to express our continued strong support for the Department of Labor's ("DOL's") conflict of interest rule and continued opposition to any delay or efforts to weaken the rule. The rule will not adversely affect the ability of Americans to gain access to retirement advice. Instead, the rule will favorably impact investors and retirement savers by ensuring that any investment advice will be in their best interests and at a reasonable cost. Because the rule protects investors who lose billions each year from conflicted investment advice, we urge you to move forward with implementation of the rule without further delay. Failure to implement the rule would place the interests of Wall Street over working Americans and will result in continued financial harm to working people and retirees.

The rule addresses a multi-billion problem in the retirement advice market. Under current law, many financial advisers that investors and retirees turn to for investment advice are legally allowed to make recommendations that are highly profitable to them, even if they are not in the clients' best interests. And until the rule is implemented, it will remain perfectly legal for them to do so. In its Regulatory Impact Analysis ("RIA"), the DOL detailed widespread evidence of conflicted advice and the serious financial harm this causes to plan and IRA investors. The RIA found that advisers' conflicts take a variety of forms and bias their advice in a variety of ways. Moreover, it found adviser compensation arrangements are often calibrated to align their interests with those of their affiliates and product suppliers and often introduce serious conflicts of interest between advisers and retirement investors. It also found advisers often are paid substantially more if they recommend investments and transactions that are highly profitable to the financial industry, even if they are not in investors' best interests.

American Federation of State, County and Municipal Employees, AFL-CIO

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The losses that stem from conflicted advice are significant, as investors are losing billions of dollars from excessive fees and underperformance. After a careful review of the evidence, the DOL's RIA estimated that IRA holders receiving conflicted investment advice can expect their investments to underperform by an average of 50 to 100 basis points per year over the next 20 years. The DOL concluded that the underperformance associated with conflicts of interest – in the mutual funds segment alone – could cost IRA investors between \$95 billion and \$189 billion over the next 10 years and between \$202 billion and \$404 billion over the next 20 years. And the DOL's analysis found that these losses represent only a portion of what retirement investors stand to lose from adviser conflicts. The total harm to investors is much greater when the many other products that involve conflicted advice are taken into account.

In addition to IRA investors, plan participants and beneficiaries also experience substantial losses from conflicted advice. The overwhelming majority of money flowing into IRAs comes from rollovers from an employer-based retirement plan, and not direct IRA contributions. The amounts at risk are enormous. According to the DOL's RIA, rollovers are expected to approach \$2.4 trillion cumulatively from 2016 through 2020. The RIA found that an ERISA plan investor who rolls her retirement savings into an IRA could lose 6 to 12 and possibly as much as 23 percent of the value of her savings over 30 years of retirement from conflicted advice. The RIA cites GAO reports finding that defined benefit pension plans using consultants with undisclosed conflicts of interest earned 1.3 percentage points per year less than other plans and that adviser conflicts may cause plan participants to roll plan assets into IRAs that charge high fees or 401(k) plan officials to include expensive or underperforming funds in investment menus.

Without the fiduciary rule, investors cannot reasonably be expected to protect themselves. Investing is not a simple task for most Americans. A report on financial literacy by the Library of Congress found that American investors do not understand basic financial concepts, such as compound interest and inflation, and lack essential knowledge about concepts such as the meaning of stocks and bonds, investment fraud and the importance of investment costs and expenses.¹ Further, investors are confused on whether a fiduciary standard applies in their relationships with financial intermediaries, and a majority trust that the advice they will be given will be in their best interest. Two surveys highlight this acute investor susceptibility, with one finding that 76 percent of investors believe that financial advisors are held to a fiduciary standard,² while the other found that 70 percent of investors have confidence that financial advisors and brokers are looking out for their best interests.³ And a study by Consumer Federation of America and Americans for Financial Reform highlights the risk to vulnerable

¹ "Financial Literacy among Retail Investors in the United States," Library of Congress, December 30, 2011, pgs. 5-6 (available at: <https://www.sec.gov/news/studies/2012/917-financial-literacy-study-par12.pdf>).

² "U.S. Investors & the Fiduciary Standard - A National Opinion Survey," ORC/Infogroup, September 15, 2010, p. 5 (available at: http://www.cfp.net/does/public-policy/us_investors_opinion_survey_2010-09-16.pdf?sfvrsn=2).

³ "2014 Main Street Investor Survey," Center for Audit Quality, October 1, 2014, pgs. 10, 16 (available at: <http://www.theqaq.org/does/reports-and-publications/caq2014mainstreetinvestorsurvey.pdf?sfvrsn=2>).

investors. It found that many broker-dealers and insurance agents providing non-fiduciary sales recommendations portray themselves to customers as financial advisors, not salespeople, market their services as advisory in nature and encourage customers to rely on them as trusted fiduciary advisers.⁴ Investors face a myriad of choices and decisions in an area where the evidence shows they do not have sufficient financial and investment expertise to make informed decisions to protect themselves from the harmful impact of conflicted advice.

The arguments that the rule is harming the ability of Americans to gain access to financial advice or will raise the cost of advice do not hold water. There is substantial evidence showing that the rule is actually having the opposite effect, with expanded investor choices and significant cost reductions.⁵ The rule is eliminating harmful conflicts associated with commission-based advice without eliminating access to commission-based advice. For example, firms including Ameriprise and Morgan Stanley continue to offer commission-based investment advice.⁶ Other firms like Edward Jones and LPL have reduced the minimums on fee accounts.⁷ And major firms, including Blackrock, Fidelity, Prudential and Charles Schwab, have announced plans to reduce costs on investment products such as ETFs and mutual funds in part to be more competitive under the DOL rule.⁸ The claims that firms would exit the market, consumer choice would be limited and costs would go up appear to have been exaggerated.

Moreover, the rule is resulting in benefits for investors in the form of new product lines, which are transforming commission accounts into an attractive option for investors. For example, the Securities and Exchange Commission recently approved a request from the Capital Group to create a new class of “clean” mutual fund shares for its American Funds that conform to the DOL rule while preserving investors’ ability to get commission-based advice. The “clean shares” separate out the fees for mutual fund distribution from those for investment management. The shares have no built-in commission or 12-b(1) fees, and intermediaries can charge for their services separately. Clean shares are being described as a “game changer” for the mutual funds and advisers who sell them.⁹

⁴ Micah Hauptman and Barbara Roper, “Financial Advisor or Investment Salesperson? Brokers and Insurers Want to Have It Both Ways,” Consumer Federation of America, January 18, 2017 (available at: <http://consumerfed.org/reports/financial-advisor-or-investment-salesperson-brokers-and-insurers-want-to-have-it-both-ways/>).

⁵ “The Department of Labor Conflict of Interest Rule Is Already Delivering Benefits to Workers and Retirees: Delay Puts Those Benefits at Risk,” Consumer Federation of America (available at: http://consumerfed.org/wp-content/uploads/2017/01/1-31-17-DOL-Rule-Delivering-Benefits_Fact-Sheet.pdf).

⁶ “Ameriprise Will Stick with IRA Commissions under DOL Fiduciary Rule,” InvestmentNews, October 26, 2016; “Morgan Stanley to Keep Commission-Based IRA Business despite DOL rule in Contrast to Merrill Lynch,” InvestmentNews, October 26, 2016.

⁷ Michael Wursthorn, “Brokerages Adapt to Pending Labor Rule,” Wall Street Journal, March 16, 2016.

⁸ “BlackRock Cuts ETF Fees Ahead of New Financial Advice Rule,” Reuters, October 5, 2016; Jeff Benjamin, “Fidelity Fires the Latest Salvo in ETF Fee War,” InvestmentNews, October 12, 2016; “Prudential Investments Joins the Fee-Cut Bandwagon,” InvestmentNews, October 18, 2016; “Schwab Announces Schwab Intelligent Advisory,” Charles Schwab, December 13, 2016 (available at: <http://pressroom.aboutschwab.com/press-release/schwab-investor-services-news/schwab-announces-schwab-intelligent-advisory>).

⁹ John Waggoner, “Clean Shares Could Revolutionize the Fund Industry,” InvestmentNews, February 2, 2017.

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We believe a fair evaluation of the rule will result in the conclusion that the rule is needed and working as intended. Based on the large body of evidence, the DOL cannot reasonably conclude that retirement investors are losing access to investment advice because of the rule or that their costs are likely to increase. This is a rule that has already been thoroughly vetted. The idea that enacting a rule that prevents investors from losing billions of dollars in excess fees and underperformance will ultimately be harmful to these investors flies in the face of logic. To the contrary, protecting investors from conflicted advice will be of enormous benefit to them. It is time to put the interests of average Americans first over the interests of the financial industry. Accordingly, the fiduciary rule should be implemented without further delay.

We appreciate the opportunity to share our views on this proposed delay. If you have any questions, or need additional information, please do not hesitate to contact John Keenan at (202) 429-1232.

Sincerely,



Steven Kreisberg
Director
Department of Research &
Collective Bargaining

SK/JK:jm