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June 23, 2015

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Conflict of Interest Rule
Room N–5655
U.S. Department of Labor
200 Constitution Avenue NW.
Washington, DC 20210

Re: Proposed Rule Defining Fiduciary of an Employee Benefit Plan under the Employee Retirement Income Security Act of 1974 (ERISA)
Regulatory Identifier Number: 1210–AB32

To Whom It May Concern:

The Department of Labor published a Proposed Rule Defining Fiduciary of an Employee Benefit Plan under the Employee Retirement Income Security Act of 1974 (ERISA) in the Federal Register of April 20, 2015. The Legal Services Advocacy Project (LSAP) respectfully submits the comments below and urges final adoption of the proposed rule. Enactment of the rule will help protect existing and future retirement assets by strengthening the rules governing ERISA to require that more retirement financial advisors are subject to a fiduciary duty. It is essential that financial advisors have a legal duty to act in clients' best interests, especially when the funds in question are those clients' will need later in life to ensure their financial security.

LSAP is the advocacy unit of Legal Aid in Minnesota, representing the six regional legal services programs in legislative and administrative forums on the spectrum of issues affecting low-income clients and low-wage workers. It has provided advocacy on behalf of clients and all low-income, low-wage Minnesotans for 38 years. Among the clients that LSAP and Legal Aid represent are elders and individuals and families beginning to acquire income and assets sufficient to move them out of poverty.

LSAP appreciates the opportunity to provide input into the Department's rulemaking process. If there are questions or more information is needed, I can be reached at 612-636-2114 or relwood@mnlsap.org.

Sincerely,

Ron Elwood
Supervising Attorney

COMMENTS

Experts sound the alarm about the large segment of Americans that have no retirement savings.[1] Unquestionably, helping more Americans achieve financial stability in their later, retirement years is a critical policy imperative.

At the same time, a significant amount of assets – including those of low-income Americans – are today devoted to retirement savings. The Employee Benefit Research Institute reports that, in 2012, retirement plan assets in the United States totaled $2.7 trillion.[2] And, while it is true that low-income households save at a lower rate than non-low income households, the Center for Budget and Policy Priorities has found that about one-fifth of low-income households across America have retirement accounts.[3]

Moreover, millions more, including more than 590,000 Minnesota households, are striving to escape poverty, build assets and wealth, and achieve financial stability.[4] The final report of the legislative Commission to End Poverty in Minnesota by 2020 highlights several programs that are

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[1] *See, e.g.,* Board of the Governors of the Federal Reserve, *Report on the Economic Well-Being of U.S. Households in 2013* (July 2014), at 3 (reporting that "[m]any households reported that they are not prepared for retirement"); Susan Reimer, *Americans Aren't Saving for Retirement*, BALTIMORE SUN, August 20, 2014 (predicting that the United States is "headed for a retirement train wreck"); and Bruce Kennedy, *Shocking Number of Americans Have No Retirement Savings*, CNBC MONEYWATCH, Aug. 18, 2014 (reporting on a Bankrate.com survey showing that "more than one-third of all working-age adults" have no savings toward retirement).

[2] Employee Benefit Research Institute, *FAQs About Benefits—Retirement Issues;* at http://www.ebri.org/publications/benfaq/index.cfm?fa=retfaq4

[3] Zoe Neuberger, Robert Greenstein, Eileen P. Sweeney, and Peter R. Orszag, Center for Budget and Policy Priorities, *Policy Brief: Protecting Low-Income Families' Savings* (June 21, 2005); at http://www.cbpp.org/research/policy-brief-protecting-low-income-families-savings.

[4] Approximately 28% of Minnesota households live in "liquid asset poverty." Corporation for Enterprise Development (CFED), *Assets and Opportunities Scorecard* (2015). A household lives in liquid asset poverty if it does not have at least three months' worth of savings to weather a financial crisis. Jennifer Brooks, Kasey Wiedrich, Lebaron Sims, Jr. and Solana Rice, *Excluded from the Financial Mainstream: How the Economic Recovery is Bypassing Millions of Americans* (Washington, D.C: CFED, 2015), at 4. According to the United States Census, there are 2,107,232 households in Minnesota; 28% (i.e., those living in liquid asset poverty) equals 590,024. United States Census, *State and County Quick Facts* (2015); at http://quickfacts.census.gov/qfd/states/27000.html.

successfully helping low-income Minnesotans begin to build wealth and have the ability to plan and save for retirement.[5]

Expanding the opportunities and eliminating the barriers to increase retirement savings among low-income households would "reduce elderly poverty and improve the standard of living of low-income seniors."[6] But, as a recent AARP commissioned report by the Brookings Institution and the Heritage Foundation concludes, the "number and variety of accounts and low financial literacy…create high barriers to saving for many people."[7] Further, for a variety of reasons – e.g., academic and financial literacy, limited English proficiency -- low-income individuals and families are especially vulnerable to financial exploitation.[8]

The United States Department of Labor's proposed rules "would treat persons who provide investment advice or recommendations to an employee benefit plan, plan fiduciary, plan participant or beneficiary, IRA, or IRA owner as fiduciaries under ERISA and the Code in a wider array of advice relationships than the existing ERISA and Code regulations, which would be replaced."[9] In addition, the rules propose exemptions that "enable advisers and their firms to give advice that is in the best interest of their customers, without disrupting common compensation arrangements under conditions designed to ensure the adviser is acting in the best interest of the advice recipient."[10]

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[5] *See* Commission to End Poverty in Minnesota by 2020, *Legislative Report* (2009), at 9 (noting the following programs as working on the solutions to moving Minnesotans out of poverty to financial stability: Search Institute's 40 Developmental Assets; the Itasca Project's Mind the Gap initiatives; Family Assets for Independence in Minnesota (FAIM); Northern Connections; Minnesota Community Action Partnership's Circles of Support; Achievement Plus Schools; and the Minnesota Department of Employment and Economic Development's Pathways).

[6] The Retirement Project, *Protecting Low-Income Families' Savings* (2005), at 7. The Retirement Project is supported by The Pew Charitable Trusts in partnership with Georgetown University's Public Policy Institute and the Brookings Institution.

[7] William G. Gale, David C. John, and Spencer Smith, *New Ways to Promote Retirement Saving* (Washington, D.C.: AARP Public Policy Institute, 2012), at 7.

[8] *See, e.g,* Consumer Financial Protection Bureau, *Empowering Low-Income and Economically Vulnerable Consumers* (2013), at 17 (noting that "low-income consumers are sometimes disadvantaged by language barriers, low levels of literacy or numeracy, disability, or other factors"); and Steven W. Bender, *Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace*, 45 AM. U. L. REV. 1027, 1035 (1996) (describing merchant exploitation of non-English speaking Latinos and Latino culture).

[9] Definition of the Term "Fiduciary," 80 Fed. Reg. 21928, 21928 (April 20, 2015) (to be codified at 29 CFR pts. 2509 and 2510).

[10] Id., at 21929.

LSAP supports the Department of Labor's proposed rule. Requiring various financial advisors to act in the best interests of clients is not a new concept. In Minnesota, both real estate brokers and mortgage brokers are under a statutory duty to act in their clients' best interest.[11] Financial advisors working with consumers' retirement savings should be subject to the same duty.

While retirement advisors should be obligated to act in the best interests of all consumers, it is especially critical when advice is being proffered to low-income clients, whose portfolios are not as robust as upper income clients, and for reasons articulated above are often vulnerable and susceptible to financial exploitation. In sum, if and when Legal Aid's clients seek to build and invest assets in retirement plans, they should be able to rely on a retirement financial advisors advice and be secure in the knowledge that the advisor is always acting in the clients' best interests. Adoption of the proposed rule would accomplish that goal.

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[11] *See* Minn. Stat. § 58.161 (requiring mortgage brokers to act the consumer's best interest); and Minn. Stat. § 82.67 (requiring sellers' brokers and buyers' brokers to act in the client's best interest).