



July 20, 2015

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: Definition of the Term “Fiduciary”; Conflict of Interest Rule-Retirement
Investment Advice - Document Number: 2015-08831**

Dear Sir or Madam:

On behalf of the 1.453 million credit union members we represent, the Missouri Credit Union Association (MCUA) appreciates the opportunity to comment regarding the U.S. Department of Labor’s (DOL) proposed regulation defining who is a “fiduciary” of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA) which includes adding brokers and advisers providing advice to individual retirement accounts to the definition.

MCUA supports the goal of this rule to protect investors and encourage all advisors to act in the investor’s best interest. Credit unions exist to serve their members, and inherent in the credit union movement is acting in a members’ best interest. Credit unions offering investment services to their members aim to help families of all means receive information about saving for retirement and planning for their future.

We agree with the DOL that credit union members, and all consumers, deserve the best possible service when seeking information about retirement plans or Individual Retirement Account (IRA) distributions. However, it is important to have rules that encourage and promote retirement savings – rather than potentially discourage the ability of credit unions, or other financial institutions, to provide these services. This is a particular concern for lower net-worth members who may have fewer chances to learn about retirement and savings plans.

Credit Unions Provide Retirement Products & Services to Their Members

Under the proposed rule a person receiving compensation for advice that is individualized or specifically directed at a particular plan sponsor, plan participant or IRA owner for consideration in making retirement investment decisions would be considered a fiduciary, unless they meet one of the specified carve-outs.

For a majority of credit unions offering brokerage services, compliance with this DOL proposal will not sit at the credit union level because there are typically arrangements with third party brokers that outline their duties and responsibilities. The third party offering retirement or IRA

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services in most situations will be responsible for their own compliance with applicable laws and compliance standards. The third party usually sells their products directly to members. Credit union employees who interface between credit union members and the third party are only involved in a minor way. We appreciate that the proposal is not intended to implicate someone as a fiduciary merely by providing participants with information about a retirement plan or IRA distribution options. We suggest that the definition of “education” and the “education carve-out” be refined so as not to discourage credit unions from providing retirement investment options.

MCUA understands that credit unions are required to conduct due diligence to ensure any third party practice has proper controls in place. Ensuring third party practices are compliant could cause the DOL proposed rule to be an additional compliance consideration. In addition, the DOL enforcement mechanism of class action litigation could sweep in credit unions, as sponsors of these brokers-dealers, when plaintiffs bring an action against multiple parties. Unfortunately, any class action defense generates additional costs that are borne by the members of their credit union. If increased, class action exposure is coupled with a broker-dealer system that moves to an expensive fee for service model. Credit unions will need to determine whether it is in the best interest of the credit union and its members to engage in a broker-dealer relationship. Given the focus of credit unions – particularly on people of modest means and underserved niches, we hope that the market dislocations caused by this proposal will not undermine our mission of “people helping people.”

Additionally, under other less common circumstances, MCUA has some concerns that credit unions could be directly swept into this rule. For example, credit unions could be substantially affected when they share employees with a broker dealer. A letter issued by the National Credit Union Administration (NCUA) in 2010 provides some guidance about this type of arrangement stating, “No employee of a federal credit union may provide investment advice that would subject the employee or credit union to federal or state securities laws. A federal credit union, however, may offer investment advice services to its members by establishing a shared employee arrangement with a third party registered investment adviser. The dual employee may provide investment advice on behalf of the third party, but not the credit union. A federal credit union may also act as a finder to introduce or otherwise bring together an outside vendor of investment adviser services to its members or wholly or partly own a CUSO that provides investment adviser services.” In the case of dual employees, it becomes less clear that the credit union employee is exempt from consideration as a fiduciary.

Overly Prescriptive Requirements Surrounding Compensation Create Ambiguity

The DOL’s proposal includes anyone who recommends specific investments and receives a fee as a fiduciary. However, there is a proposed exemption, the Best Interest Contract Exemption, that would provide conditional relief for common compensation, such as commissions and revenue sharing, that an adviser and the adviser's employing firm might receive in connection with investment advice to retail retirement investors. The exemption requires the firm and the adviser to contractually acknowledge fiduciary status, commit to adhere to basic standards of impartial conduct, adopt policies and procedures reasonably designed to minimize the harmful impact of conflicts of interest, and disclose basic information on their conflicts of interest and on the cost of their advice.



Credit union employees generally do not receive referral compensation for such services. So, they likely will not be responsible for preparing and executing the contracts to meet this exemption. However, an overly prescriptive outline for allowing compensation in the rule could be burdensome for credit unions who may reevaluate broker-dealer relationships and internal procedures.

When a credit union has a sponsor that sells insurance and investment products through various subsidiaries, the credit union's broker dealer could fall under the rule. In a situation such as this, a credit union may receive referrals for various credit union products, such as the credit union's IRA products. In this scenario, a credit union make a clear distinction that employees are not compensated for these referrals to avoid being considered an ERISA fiduciary.

Regulatory Overlap is Burdensome

The onerous and complex nature of the proposed rule, and the potential regulatory overlap could have the unintended consequence of reducing options for members of credit unions seeking investment products. Federally chartered credits unions are supervised by the NCUA, and the Consumer Financial Protection Bureau if they have \$10 billion or more in assets, while state-charted credit unions are regulated at the state level.

The Financial Industry Regulatory Authority and U.S. Securities and Exchange Commission 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. An unintended expansion of what is considered investment advice, or fear of qualifying as an ERISA fiduciary could cause credit unions to avoid offering investment services to their members.

The compliance burdens for those who will qualify as ERISA fiduciaries are great, and small or middle size credit unions could be hesitant to engage in any activity that may sweep them into this expansive proposed rule. The responsibilities associated with being an ERISA fiduciary would likely require expensive, and time consuming, compliance training for credit unions.

Sellers Exemption

The DOL has proposed a "seller's carve-out" to avoid imposing ERISA fiduciary obligations on sales pitches that are part of arm's length transactions where neither side assumes that the counterparty to the plan is acting as an impartial trusted advisor. Under this carve-out, the DOL requested comment on the "sellers" exemption for plans with 100 or more plan participants and whether other conditions would be more appropriate proxies. Since some credit unions serve as small plan sponsors, these small plan fiduciaries need to obtain essential information regarding important decisions they make regarding their investments from a number of sellers. To the extent that multiple sellers are in the market, encouraging multiple "pitches" from a spectrum of competitors, where the sellers activity does not cross the line into fiduciary status, would seem to be advantageous in the decision making process and promote multiple offers in a competitive marketplace. Given that credit unions are highly regulated financial entities with a board of directors, we believe that it would be appropriate to recognize all financially regulated entities as



one criterion for a seller's carve-out. For example, we believe that the number of plan participants could be lower to recognize the structure of a credit union and its role as a heavy regulated financial entity.

As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

A handwritten signature in blue ink that reads 'Don Cohenour'. The signature is fluid and cursive, with the first name 'Don' being more prominent.

Don Cohenour
President

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