



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

August 26, 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

I write to express my unqualified support for the Department of Labor's (DOL) fiduciary rule proposal and urge its expeditious passage into law. With the potential to transform the regulatory landscape surrounding retirement investments, the Department of Labor's proposal will ensure that financial advisors put their client's interests above their own.

As I explored in an April 2015 report, *Safeguarding Our Savings: Protecting New Yorkers Through the Fiduciary Standard*, the current regulatory regime allows conflicts of interest, high fees, and non-objective investment advice to leech billions of dollars yearly from the hard-earned retirement savings of American workers.

With more than 70% of employees saving within defined contribution plans, including over 3.5 million New Yorkers, Americans rely on financial advisors to safeguard and grow their savings. A 2006 survey conducted by the Consumer Federation of America demonstrates that nearly three in ten savers relied wholly on the advice of a professional before purchasing a security, and that another third "relied a great deal" on the recommendations of their adviser.

However, outdated laws, regulations and legal loopholes have made it hard for Americans to know whether advisers are following the highest investment standard—known as the fiduciary duty—in making their recommendations. Instead many advisers provide advice under a much more permissive set of legal guidelines, known as the suitability standard.

Simply put, a suitability standard allows, and indeed frequently requires, a broker to put his or his firm's interests ahead of the client's interests. The regulatory loopholes that allow investment advisers to dispense advice under the suitability standard can cost retirement savers, and by extension the U.S. economy, billions of dollars per year. Consumers can see their savings

depleted by high fees, directed into inappropriate investment vehicles via rollovers, or subject to troubling conflicts of interest.

Cumulatively, conflicts of interest cost investors billions. A report issued by the President's Council on Economic Advisers conservatively estimates that such conflicted advice leads to lower investment returns— approximately 1 percentage point lower each year. While seemingly marginal, the cumulative toll of losing just 1 percent of returns annually could reduce a family's savings by more than a quarter over a lifetime of savings. Collectively, it adds up to \$17 billion in lost returns every year in Americans' Individual Retirement Accounts (IRA) alone.

That is why immediate regulatory action is critical, and I commend the President, Secretary Perez, and Assistant Secretary Borzi for their leadership in crafting a rule that updates a nearly 40-year -old rule to redefine the role of the fiduciary for the 21st century. The proposed regulatory actions will more thoroughly protect American savers from conflicts of interest and ensure advisors offer their clients objective and unbiased advice. In doing so, the proposed changes promise to have a positive impact on the lives and pocketbooks of all Americans, including New Yorkers.

DOL's rule replaces ERISA's cumbersome and dated definition of investment advice with a functional and common-sense explanation of when fiduciary duty must apply. The rule's careful construction ensures that the retirement advice marketplace can work to the equal benefit and profit of the consumer and the advisor.

I am particularly pleased that the proposed rule addresses the pernicious influence of retirement account rollovers. Rollovers, which transfer funds either from an employer-sponsored pension or 401(k) into a traditional or Roth IRA, often carry higher fees with little corresponding benefit. Under current rules, it is legally permissible for brokers to utilize cold calls, advertising, and direct mailing to urge consumers to reallocate their savings to privately administered 401(k)s, even if fees are higher. Advisers and industry experts confided to the Government Accountability Office that a broker could earn \$6,000 to \$9,000 for maneuvering a client into the purchase of a high fee IRA, compared to only \$50 to \$100 if their client stayed within an existing 401(k) plan. By applying the fiduciary rule to all rollovers and other distributions, investors would be protected from a perverse incentive structure which encourages brokers to misrepresent their product and mislead their clients.

The proposed rule also benefits from the inclusion of a creative Best Interest Contract (BIC) exemption. The BIC exemption will allow advisors, complying with certain stringent conditions, to continue to receive commissions. If enforced consistently and with transparency, the BIC exemption provide necessary regulatory oversight over advisor compensation. The BIC exemption should also be lauded for creating a new remedy for investors who fall victim to conflicted advice and duplicitous business practices. While I am supportive of the exemption's intent, I urge DOL to refine the portion of the rule allowing brokers to steer their clients into pre-dispute arbitration agreements. Investors should have recourse to exercise a right of action in state or federal court, rather than see their complaints referred to potentially conflicted arbitration

panels. By prohibiting mandatory arbitration clauses, DOL can ensure that the totality of the fiduciary rule is fairly enforced.

As the fiduciary to New York City's five municipal pension funds, I am charged with managing over \$160 billion in assets on behalf of 700,000 active and retired City employees. While the work of investing and growing our funds is complex and technical, our responsibility to our retirees and their families is very clear: we must work on their behalf to ensure a stable financial future. DOL can translate that principal into regulation by extending the fiduciary rule's protections to all Americans. I urge its adoption.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Scott M. Stringer

City Comptroller of New York