



**America's  
Credit Unions**

January 10, 2024

The Honorable Ann Wagner  
Chairwoman  
Committee on Financial Services  
Subcommittee on Capital Markets  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Brad Sherman  
Ranking Member  
Committee on Financial Services  
Subcommittee on Capital Markets  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairwoman Wagner and Ranking Member Sherman:

**Re: Today's Hearing: "Examining the DOL Fiduciary Rule: Implications for Retirement Savings and Access."**

On behalf of America's Credit Unions, I am writing regarding the Committee's hearing entitled, "Examining the DOL Fiduciary Rule: Implications for Retirement Savings and Access." America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their nearly 140 million members nationwide.

On October 31, 2023, the U.S. Department of Labor released a proposed rule redefining who is an investment advice fiduciary for purposes of the Employee Retirement Income Security Act (ERISA). The Department also released proposed amendments to class prohibited transaction exemptions (PTEs) available to investment advice fiduciaries, including PTE 2020-02, "Improving Investment Advice for Workers & Retirees."

Credit unions exist to serve their members, and inherent in the credit union movement is acting in a member's best interest. Credit unions offering investment services to their members aim to help American families of all means receive information about saving for retirement and planning for their future. While many large investment firms seek high net worth clients, credit unions seek to provide services to their members in all financial situations and make it easier for these individuals to map out financial plans.

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 chill the ability of credit unions, or other financial institutions, to provide these products and services.

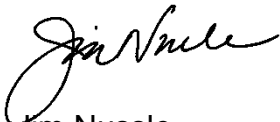
The National Credit Union Administration (NCUA) has traditionally stated that federal credit unions may not act as broker-dealers in securities or provide investment advice of the type that would render them “investment advisers” under state or federal securities laws. While the Fiduciary Duty Rule covers these types of activities, the proposed language also covers transactions and relationships that are significantly broader in scope, including a significant number of transactions and relationships relating to individual retirement accounts (IRAs).

Americas Credit Unions and our members are concerned that the Fiduciary Duty Rule casts a wide net that unfairly burdens credit union activity with complex requirements and potential litigation risk. For example, the requirements of the rule can be triggered when an individual provides a “recommendation,” which is defined as a “a communication that, based on its content, context, and presentation, would reasonably be viewed as a suggestion that the advice recipient engage in or refrain from taking a particular course of action.” Without more targeted guidance, the rule may be interpreted to include general advice and explanation of investment-related financial products, such as IRAs, provided by credit union employees.

In light of such possible interpretations, credit unions may decide that it is no longer worthwhile to recommend an investment advisory credit union service organization (CUSO) to a member to either set up an IRA or create an employee welfare benefit plan (if the member is a business). This is concerning since credit unions and credit unions employees have long provided financial products, services, and support to their members. If credit union employees are categorized as financial advisors in the final rule, it could have a negative impact on the credit union industry and may hurt many Americans who seek financial services.

On behalf of America’s Credit Unions and the 140 million credit union members, thank you for holding this important hearing and considering our views on the subject.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nussle". The signature is written in a cursive, flowing style.

Jim Nussle  
President and CEO