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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 30, 2015

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

Dear Sir or Madam:

I am the New York State Comptroller and the Trustee of the New York State Common Retirement Fund (CRF), the third largest defined benefit public pension system in the country. I am writing in support of a rule proposed by the United States Department of Labor (USDOL), published in the Federal Register on April 20, 2015, which clarifies the definition of the term "fiduciary" and expands the conflict of interest rule for those who provide retirement investment advice. I applaud USDOL for carefully considering the comments received following its initial publication of a proposed fiduciary rule in 2010 and for crafting a common sense and balanced solution. The new proposed rule offers an enforceable best-interest standard that will protect plan sponsors, employees, beneficiaries, and the investment advisors who put the interests of their clients ahead of all other considerations. The USDOL proposed rule improves transparency and mitigates the harmful effects of conflicts of interest. In particular, requiring better disclosure of fees that can siphon away retirement savings will improve retirement security.

The retirement landscape is much different today than it was when the Employee Retirement Income Security Act of 1974 (ERISA) was enacted and previous fiduciary rules were promulgated. Over the past few decades, there has been a major shift from defined benefit plans to defined contribution plans in the private sector in New York State and across the country. Most 401(k) and IRA account balances are modest, and rising life expectancy and health care costs put more New Yorkers at risk of outliving their retirement savings. The average defined contribution plan balance in 2012 was $30,811 in New York State, slightly higher than the U.S. average of $30,345. Even worse, less than half of the current workforce in New York State has access to or participates in an employment-based retirement plan. The retirement security for far too many of today's working households—especially low and middle income New Yorkers—is at serious risk. Closing the loopholes on conflicting investment advice will help assure that

working families have the information they need to prevent the further erosion of the limited retirement assets they have been able to accumulate.

USDOL's proposed protections are especially critical because the shift from defined benefit to defined contribution plans has largely transferred the responsibility of saving for retirement and managing retirement savings to employees who often lack the time and expertise to make informed investment decisions. The existing rules under ERISA do not provide sufficient protections for the growing number of workers who must save for retirement through defined contribution and IRA plans. Decisions like investment choices, fees paid, and disbursements of assets influence whether an individual will have enough money to retire. Yet, financial literacy surveys reveal that the general public does not have adequate knowledge about economics and finance to prepare for retirement. Far too many workers must choose among a complicated array of retirement savings options and receive little information about associated fees and costs. When workers turn to their retirement plan advisors for guidance, they should be able to trust that their advisors are telling them the truth about their investments and fees, and acting in their best interest.

Public pension plans are not subject to ERISA oversight, but must comply with a wide range of federal, state and local governmental requirements. As the Trustee of the CRF, I have a fiduciary responsibility to protect the retirement assets of over one million public employees, beneficiaries and retirees. To assist me in fulfilling my duties as a fiduciary, I have established a reporting and review system designed to prevent conflicts of interest or the appearance of conflicts of interest in CRF's investment decision-making process. Our investment and conflict of interest policies and practices ensure that investment decisions are made for the sole benefit of CRF's participants and beneficiaries, and protect the retirement assets of our members, beneficiaries and retirees. These policies and practices are similar to existing ERISA standards and the proposed rule, and are not unduly burdensome.

New York State also offers state and local government employees an opportunity to save for retirement through a Deferred Compensation Program (DCP), a program established pursuant to section 457(b) of the Internal Revenue Code; New York's program is the largest 457(b) in the country. In situations in which DCP contributors are advised to rollover their accounts into IRAs, they need assurance that the investment advisor is looking out for their best interests and protecting their hard-earned savings. The proposed rule will improve the reliability of the advice that our DCP participants will receive.

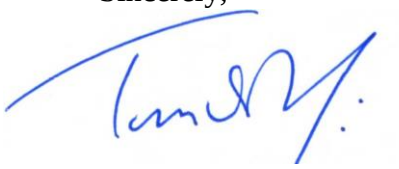
Some critics say that the proposed rule might keep some advisors from doing business with small investors. However, the proposed rule is flexible in that it includes exemptions, provided certain conditions are met, which allow some advisers to continue to receive payments that could otherwise create prohibited conflicts of interest. USDOL also put forth a reasonable proposal for a streamlined exemption for recommendations involving high-quality low-fee investments that present less risk of abuse.

The departure of advisors who are not willing to meet the standards set by the proposed rule is a positive result for workers who are struggling to save for their retirement. Further, USDOL's proposed rule will level the playing field for those advisors who already put their

customers' interests first. And, the expected benefits to workers trying to save for retirement far outweigh the rule's moderate costs to implement.

USDOL has been thorough and thoughtful in its consideration of comments received after its 2010 proposal and it has been extremely generous in extending the comment period for the current proposed fiduciary duty rule. It is now time to close the loopholes in outdated fiduciary and conflict of interest rules. The current proposal reflects a reasoned and reasonable approach by USDOL to meet the needs of workers and their beneficiaries who cannot afford to wait for help in protecting their retirement.

Sincerely,



Thomas P. DiNapoli
State Comptroller