

Submitted:
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**Testimony by Dennis Simmons and Robin Diamonte
On Behalf of the Committee on Investment of Employee Benefit Assets (CIEBA)
Regarding the Proposed Investment Advice Exemption**

[*Dennis Simmons*]

- Thank you for the opportunity to testify today regarding the Department’s Proposed Investment Advice Exemption and, more generally, the standards applicable to advisors making rollover and other recommendations to plan participants.
 - My name is Dennis Simmons, and I am the Executive Director of CIEBA.
 - I’m joined today by Robin Diamonte, the Chief Investment Officer for Raytheon Technologies Corp. and a member of CIEBA’s Board of Directors.

- CIEBA is a trade association that represents many of the nation’s most experienced investment fiduciaries.
 - CIEBA’s membership includes more than 110 of the country’s largest pension fund and 401(k) plan investment fiduciaries, and our members manage more than \$2 trillion of defined benefit and defined contribution plan assets on behalf of more than 17 million plan participants and beneficiaries.
 - CIEBA represents the interests of CIOs who have decades of experience in serving as investment fiduciaries for many of the country’s largest and most sophisticated pensions and 401(k) plans.
 - CIEBA and our members are committed to promoting policies that are protective of plan participants and the retirement system.

- We appreciate the Department’s efforts to ensure that those providing advice to plan participants are held to the highest possible standard.
 - Over the past three decades, there have been profound changes in the retirement system, not least of which is the fact that the 401(k) plan has largely replaced the defined benefit plan as the predominant retirement plan for employees throughout the United States.
 - Because of the shift from a DB to a DC system, participants are now much more involved in managing their own retirement savings.
 - That gives participants more flexibility to manage their savings in a way that meets their personal objectives.
 - But it also means participants may need more help in making decisions about managing their savings.

- That is particularly true when a participant leaves employment and has to make a decision about whether to stay in the plan or rollover.
 - Rollover decisions are particularly daunting for most people, and the decision to roll out of a low-cost, professionally managed 401(k) into a potentially higher-fee IRA can have a devastating impact on a person’s retirement prospects.
 - Participants need advice from trusted experts and safeguards from conflicted advice when considering whether and how to rollover their retirement savings. Effective measures to ensure participant retirement savings programs stay on course throughout the participant’s

lifetime is a topic CIEBA's Chief Investment Officer Members regularly discuss during our periodic meetings and workshops.

[Robin Diamonte]

- As Dennis mentioned, I am the CIO for Raytheon Technologies Corporation and in that role, I am an investment fiduciary for both our defined benefit and defined contribution retirement plans.
- Our 401(k) plan is one of the largest in the country.
 - We have roughly 200 thousand participants and \$50 billion of assets in the plan.
- We have worked very hard to make sure that our employees and retirees have access to the best possible retirement savings program.
 - We are able to leverage the plan's size and our institutional relationships to give participants access to low-cost, high-performing investment options with a dollar weighted expense ratio of 20 bps. Our target date funds have an expense ratio of 6 to 7bps.
 - And our plan is specifically designed to help guide participants to and through retirement.
 - In fact, we added a lifetime income option to our plan several years ago so that participants have the option to convert their retirement savings into a guaranteed income stream for life.
- Everyone's circumstances are unique, and there are certainly reasons a person would want to roll out of the Raytheon Technologies 401(k) plan.
 - But the vast majority of people are better off staying in the plan where they have access to investments that are generally both much more cost-effective than those available to retail investors and selected by professional fiduciaries, such as myself.
- Despite this, it is my experience that participants all too often make the decision to roll out of the plan based on recommendations from financial professionals who may not have the participant's best interest in mind.
 - While many brokers and advisors in the industry offer effective programs and products to meet participant retirement savings needs, they oftentimes go to great lengths to encourage our participants to roll out because they have a financial incentive to do so.
 - They actively pursue our participants, and in many cases, our participants make rollover decisions based on slick sales pitches instead of unbiased advice.
 - I will call your attention to the photograph we submitted. It is a billboard right outside the corporate headquarters of one of our corporate subsidiaries. This billboard encouraged participants to leave the plan and roll over into an IRA. I think we can all agree that this type of "drive-by" advice and guidance should at a minimum be closely scrutinized, and actors engaged in these practices should be held to very high standards.
- It is critically important that those making recommendations to participants be held to the same fiduciary standard that I am. And they should be required to clearly state that they are acting in a fiduciary capacity.

[Dennis Simmons]

- Robin's experience is consistent with that of other CIEBA members.
- That is why CIEBA is supportive of the Department's proposed prohibited transaction exemption.
 - The exemption requires those providing investment advice to put the participant's interests first.
 - And equally important, it requires those making recommendations to acknowledge that they are acting as a fiduciary. If a person is providing fiduciary investment advice, there is simply no reason that they shouldn't be required to say so.
 - Moreover, we strongly agree with the Department that a person shouldn't be permitted simply to disclaim away fiduciary status. Fiduciary status under ERISA is, and always has been, dependent on a person's actions and should never turn on a disclaimer buried in the endnote of a contract or presentation.
- CIEBA also sincerely appreciates the Department's efforts to expand the application of ERISA in the context of rollovers by clarifying the five-part test used to determine if a person is providing fiduciary investment advice.
 - For example, the Department clarified that whether a rollover recommendation is fiduciary investment advice is determined by facts and circumstances that include the existence of an ongoing financial relationship after a rollover.
 - CIEBA also supports the withdrawal of Advisory Opinion 2005-23A, which created an unlevel playing field that made it far too easy for people to make conflicted rollover recommendations.
- Of course, there is still more to be done.
 - CIEBA continues to believe that five-part test itself needs to be revised to make it clearer that those making rollover recommendations are always fiduciaries.
 - Additionally, some financial professionals - particularly those who are focused on IRAs and the retail market - are unfamiliar with the prohibited transaction rules. CIEBA encourages the Department to do more to educate these professionals about their duties.
 - And we urge the Department to focus the agency's oversight and enforcement efforts on the rollover market to better protect savers.
- We appreciate the opportunity to testify today on behalf CIEBA's Chief Investment Officer Members and would be pleased to answer any questions you may have.