Kelley, et al vs.
TIAA, Morningstar, et al

Philip Chao, Principal & CIO, pchao@experientialwealth.com
August 8, 2024

SUMMARY

This document is solely based on the information from the Complaint and no efforts have been made to verify or confirm the completeness or truthfulness of any facts and circumstances.

- According to the Complaint, TIAA and Morningstar acting as fiduciaries to retirement plans subject to Employee Retirement Income Security Act of 1974 (ERISA), devised a scheme that violated their fiduciary duties of loyalty, prudence and serving solely in the interest of participants and beneficiaries. Further, their actions of self-dealing are deemed prohibitive transactions violations under ERISA.
- TIAA wants to devise a process to leverage its position as a recordkeeper to employer-sponsored plans, in order to gain access to participants and make investment recommendations that favored its own products.
- The scheme began in or about 2013 when TIAA realized that its share of the market for retirement plan services and investments in their proprietary investment options were eroding. Further demographic trends would soon lead to a steeper drop in revenues with the flagship TIAA Traditional Annuity experiencing negative net asset flows,
- TIAA, together with Morningstar, developed an investment advice tool that would direct assets into two of TIAA's most profitable proprietary investment vehicles: the TIAA Traditional Annuity and the TIAA Real Estate Account. The investment advice tool can be accessed through a self-help program and gain assistance from TIAA financial consultant. Or, access via TIAA managed account program. As fiduciaries, TIAA and Morningstar are duty bound under ERISA to act prudently and loyally when making investment recommendations to participants.
- TIAA incentivized their financial consultants by setting bonus quota for persuading a certain number of participants to use the two programs. By falsely telling participants that the recommendations in both programs are those of an objective, unbiased, and trusted third-party (i.e., Morningstar), and by tilting allocation to favor TIAA's two proprietary products, TIAA and Morningstar have succeeded in driving needed revenue to TIAA.
- Through their dishonest actions to benefit themselves at participants' expense, TIAA and Morningstar are violating their fiduciary duties under ERISA as well as ERISA's prohibited transaction rules.

ERISA FIDUCIARY & FIDUCIARY DUTIES

1. ERISA's three-pronged functional "fiduciary" definition[1] states that "a person is a fiduciary with respect to a plan to the extent:
   (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,
   (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or
   (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.
2. An ERISA fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan.
3. A fiduciary also must act prudently "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use."[2]

On August 5, 2024, Karen Kelley, et al ("Plaintiffs") filed a class action complaint against Teachers Insurance & Annuity Association of America and TIAA-CREF Individual and Institutional Services, LLC, TIAA Trust, N.A., Morningstar Investment Management, LLC. and Morningstar, Inc. (collectively "Defendant") for self-dealing and a breach of fiduciary duty.

PARTIES TO THE COMPLAINT

A. Plaintiffs

Class 1: All participants of defined contribution plans subject to ERISA who initiated or increased an allocation of their plan assets to the TIAA Traditional Annuity and/or the TIAA Real Estate Account at any time between August 5, 2018, and the date of judgment, based on the advice of the tool. Excluded from the class are participants of any plan sponsored by TIAA or its affiliates.

Class 2: All participants of defined contribution plans not subject to ERISA who initiated or increased an allocation of their plan assets to the TIAA Traditional Annuity and/or the TIAA Real Estate Account at any time between August 5, 2018, and the date of judgment, based on the advice of the tool. Excluded from the class are participants of any plan sponsored by TIAA or its affiliates.

B. Defendant

(1) Teachers Insurance and Annuity Association of America ("**TIAA**") is a legal reserve **life insurance company** established under the insurance laws of the State of New York in 1918. TIAA's clients include thousands of defined contribution plans which utilize TIAA's

[1] 29 U.S.C. § 1002(21)(A)
[2] 29 U.S.C. § 1104(a)(1)(B)

investment options (annuities and mutual funds) and administrative services such as recordkeeping of participants' accounts.

(2) TIAA-CREF Individual & Institutional Services, LLC ("TC Services") is a wholly owned subsidiary of Teachers Insurance and Annuity Association of America. TC Services is a Delaware limited liability company; its headquarters and principal place of business is in New York, NY. TIAA Services is a registered broker-dealer under the Securities Exchange Act of 1934, as well as an investment advisor under the Investment Advisers Act of 1940. TC Services has been providing investment advisory services and investment management services to individuals through its Advice and Planning Services division since 2004. TC Services provides a brokerage service known as **TIAA Retirement Advisor (RA)**, which purports to provide investment recommendations from **Morningstar**, a purportedly independent third party, using the **Retirement Advisor Field View ("RAFV")** tool. As of December 31, 2023, TC Services' advisory division had approximately $32.7 billion in assets under discretionary management.

(3) TIAA Trust, N.A. ("**TIAA Trust**") is a wholly owned subsidiary of TIAA and a national trust bank regulated by the U.S. Department of Treasury, Office of Comptroller of the Currency. In addition to providing deposit and loan products, TIAA Trust serves as a corporate fiduciary. The majority of its fiduciary business is managing investment account assets. **TIAA Retirement Plan Portfolio Manager ("RPPM")** is a discretionary fee-based asset allocation advisory program provided by TIAA Trust.

Founded in 1918, TIAA has historically marketed itself to higher education retirement plans. Over many decades, together with its companion, College Retirement Equities Fund ("**CREF**"), TIAA has totally dominated the market for services to retirement plans sponsored by colleges and universities, as well as other nonprofit employers. Today, nearly 80% of assets invested for retirement in higher education are held at TIAA. TIAA's business has two main parts. First, it acts as **recordkeeper** for the retirement plans of institutions. TIAA currently has over 12,000 institutional clients whose plans total approximately 4.7 million individual participants. Second, TIAA earns money as an **asset manager** for TIAA-affiliated investment products, including fixed and variable annuities and mutual funds. In many cases, as part of its recordkeeping service, TIAA provides investment advice to participants in its retirement plan clients through its financial consultants, who meet with participants by phone or in-person. As of June 30, 2024, TIAA had approximately $1.3 trillion in total assets under management, including $294 billion in its flagship Traditional Annuity and $126 billion in the CREF Stock variable annuity.

(4) Morningstar provides investors with data, research, and fund ratings, as well as investment management services and advisor tools and platforms, among other products and services. Through its **Morningstar Retirement** segment, Morningstar, offers products including managed retirement accounts, fiduciary services, allocation funds, and custom models. As of December 31, 2023, Morningstar Retirement was responsible for $230.4 billion in assets under management or advisement.

(5) Morningstar Investment Management, LLC is a registered investment adviser and subsidiary of Morningstar, Inc. Morningstar Investment Management LLC purports to provide TIAA

with independent, third-party asset allocation models and specific investment recommendations for the TIAA Retirement Advisor and TIAA Retirement Plan Portfolio Manager programs.

(6) Morningstar Investment Services, LLC is a wholly owned subsidiary of Morningstar, Inc., Morningstar Investment Services LLC is a registered broker-dealer under the Securities Exchange Act of 1934 and a registered investment adviser under the Investment Advisers Act of 1940. During the relevant time period, Morningstar Investment Services, LLC was a subadvisor for both **RA** and **RPPM**.

Hereinafter TIAA, TC and TIAA Trust are referred to collectively simply as "**TIAA**", and Morningstar, Inc., Morningstar Investment Management, LLC, and Morningstar Investment Services, LLC. are referred to collectively simply as "**Morningstar.**"

BACKGROUND SUMMARY

A. THE MECHANISM - MANAGE ACCOUNT and ADVICE SERVICE

In an account based, participant-directed defined contribution plan, participants contribute earnings into an individual account and direct the contributions into one or more investment options on the plan's investment lineup, which is assembled by the plan's fiduciaries. Managed accounts are investment services under which providers make investment asset allocation decisions for participants to allocate their retirement savings among a mix of asset classes. Managed account providers typically limit the investment options they consider to the funds chosen by the plan sponsor for the plan. The TIAA managed account service, or RPPM, utilizes computer programs to create plan participants' asset allocations. Representatives can modify client-directed inputs but cannot modify outputs and recommendations from the software program. Selecting managed accounts, like all other investment options, must be the result of a prudent process, and their fees must be reasonable. Plan fiduciaries can contract directly with a managed account provider to offer managed account services to plan participants. Alternatively, some managed account providers use "sub-advised" arrangements to offer their services through a recordkeeper. Fiduciaries have the duty to prudently monitor the plan's managed account service, including whether it provides participants added value beyond lower cost alternatives, such as target-date funds, risk-based funds, and balanced funds.

In addition to managed accounts, TIAA provides in-plan advice tools, which are supposed to help participants in a defined contribution plan determine how to allocate their investments in the plan. In contrast to managed accounts, where an investment professional makes decisions on behalf of the participant, in-plan advice tools merely provide recommendations, which participants can decide to execute on their own. Investment advice is typically conveyed in one of two ways. (1) Participants can go to a website and input information into an online investment advice tool, which then returns specific allocation recommendations. And (2) some providers offer in-person or phone consultations with investment advisors, who receive information from participants and provide them with the allocation advice. One or both of these investment advice options may be available to participants in a given plan.

B. THE PRODUCTS - TIAA ANNUITY CONTRACTS

TIAA offers **Traditional Annuity**, a fixed annuity, which provides regular periodic payments to the annuitant in retirement. The Traditional Annuity returns not less than a contractually specified minimum guaranteed interest rate with a right to annuitized payments. Assets invested in the TIAA Traditional Annuity are backed by the general account of TIAA and are dependent upon the claims-paying ability of TIAA. As of December 31, 2023, the balance of the TIAA general account was $294 billion. The TIAA Traditional Annuity does not set expense ratios. Rather, the TIAA places investors' money in its general account. TIAA then invests the general account assets and keeps the "**spread**," which is the difference between the return of the general account and the crediting rate for the annuity. The spread on the TIAA Traditional represents approximately 90% of TIAA's annual revenue.

TIAA also offers **variable annuitie**s. In order to receive lifetime periodic payments, the holder of a variable annuity must affirmatively elect to annuitize; otherwise, the variable annuity continues to invest in mutual fund like investment inside the variable contract. Studies have shown that only a small percentage of plan participants reaching retirement age annuitize their variable annuity. At the time the participant annuitizes, they trade market risk (the risk of their investment decreasing over time) to the insurance company in exchange for a promise to pay, backed by the financial health of the insurance company.

The TIAA Real Estate Account is an insurance company separate account maintained by TIAA inside the variable annuity product, with allocations to domestic commercial real estate, real estate investment trusts (REITs), and liquid fixed income investments. As of June 30, 2024, the Account had total net assets of $22.5 billion. The TIAA Real Estate Account invests directly in commercial office buildings and other real property. Because those properties cannot be quickly sold, the Account also holds a significant percentage of assets in cash or cash equivalents, to provide liquidity. The TIAA Real Estate Account is TIAA's <u>most expensive</u> variable annuity product, with a net expense ratio of 87 basis points (bps). The expense ratio of the TIAA Real Estate Account currently includes layers of fees. As of April 30, 2024, these charges are:

- "Administration" (25 bps);
- "Distribution" (4.5 bps);
- "Mortality and Expense Risk" (0 bps);
- "Liquidity Guarantee" (28 bps); and
- "Investment Management" (29.5 bps).

The Account's large cash position has historically led to a significant performance drag compared to mutual funds investing in REITs. In 2023, the TIAA Real Estate Account generated a trailing 12-month total return of negative 13.62%. Its average annual total return over the past 5-years, as of June 30, 2024, was 1.35%. The Account is currently down 4.7% year to date.

C. REGULATORY CHANGES & CONSEQUENCES

In July 2007, the Internal Revenue Service issued new regulations[3] [4] that required 403(b) plan sponsors to take more control. DOL separately published revised Form 5500 annual reporting rules effective January 1, 2009, that required large ERISA-covered 403(b) plans to file audited financial statements providing detailed information about the assets in the plan[5].

Before 2007, many in the industry believed that 403(b) plans were subject to an exemption from ERISA's fiduciary requirements under a "safe harbor" regulation[6], based upon limited employer involvement in those plans. Because of this, many 403(b) plan sponsors exercised very little fiduciary oversight over the plans and allowed recordkeepers, like TIAA, to fill them with their proprietary products. Once the regulations were published, some non-profit plan sponsors determined they have to comply with ERISA's fiduciary requirements by the regulations' effective date of January 1, 2009. As a result, the fiduciaries of many 403(b) plans implemented dramatic overhauls to their plans to comply with the IRS regulations and to satisfy their fiduciary obligations under ERISA.

Many plan fiduciaries consolidated to a single recordkeeper and began conducting regular, competitive bidding for recordkeeping services. In combination of ERISA fee litigation brought by plan participants, These actions led to a sharp drop in recordkeeping revenues for TIAA and other providers. Many 403(b) fiduciaries also began scrutinizing the investment options in the plan, streamlining the number of investment options and eliminating imprudent ones. 403(b) fiduciaries also began hiring outside consultants to assist them in monitoring fees and investments. These actions increasingly led 403(b) plans to replace TIAA and CREF investment options with funds managed by TIAA's competitors. This further reduced TIAA's revenue, as TIAA does not make money on those competitor products. In recent years, the number of plan sponsors that have removed TIAA- affiliated investment products from their plans and replaced them with funds offered by TIAA's competitors has only grown. In many plans, the only revenue-generating TIAA products that remain in the investment lineup are the TIAA Traditional Annuity and the TIAA Real Estate Account.

At or around 2009, TIAA began to lose recordkeeping clients and assets in their proprietary investment options. From 2013 to 2014, for example, a total of $6.4 billion in client assets left TIAA in favor of competitors. Demographic trends at the time further showed that a large segment of participants —the baby-boomer generation— in TIAA-administered plans and TIAA propriety investments were nearing retirement. These new retirees were increasingly likely to move their retirement assets to other providers. Based on these trends, TIAA projected in 2011 that unless it developed new strategies, its net asset flows would become negative as of 2018.

[3] 26 C.F.R. §1.403(b)-0, et seq

[4] 26 C.F.R. §1.403(b)-3

[5] 72 Fed. Reg. 64731

[6] 29 C.F.R. §2510.3-2(f)

D. PRIOR SANCTIONS

In 2020 and 2021, TIAA was forced to discontinue its unlawful conduct due to an investigation led by the U.S. Securities and Exchange Commission (SEC) and the New York Attorney General's Office (NYAG). The parties settled on July 13, 2021. TC Services was ordered to pay a $9 million fine to the SEC and return roughly $74 million in fees plus an additional $14 million in pre-judgment interest to approximately 20,000 former or current clients who uses a managed account program referred to as the **Portfolio Advisor account** using assets from a TIAA-administered retirement plan between January 1, 2012 and March 30, 2018.

On February 16, 2024, the SEC issued another order against TC Services. It found that between June 30, 2020, and November 1, 2021, TC Services violated federal law when making recommendations to customers to open TIAA IRA accounts, by failing to disclose that lower cost versions of the same TIAA investment options were available in their plans' optional brokerage window. The SEC concluded that TC Services failed to act in its customers' best interests, and that nearly 6,000 TC Services retail customers paid more than $900,000 in expenses they could have avoided. TC Services was ordered to cease and desist its unlawful activities, disgorge over $1 million in fees and prejudgment interest, and pay a civil penalty of $1.25 million.

ALLEGATIONS

A. SHRINKING REVNUE

In or about 2012, TIAA developed a scheme to prevent further losses to competitors and increase its profitability. The scheme involved expanding TIAA's individual advisory business and driving more assets directly into its most profitable proprietary investment products, including products outside retirement plans. The centerpiece of TIAA's strategy for out-of-plan products was to aggressively market its **Portfolio Advisor** account program.

Portfolio Advisor places the investor in a model portfolio of investments, which usually include proprietary TIAA products. TIAA used high pressure sales tactics, misrepresentations regarding its fiduciary status, and its "non-profit legacy" to convince participants with high account balances to roll some or all of their investments out of their low-cost defined contribution plans and into TIAA's higher-cost proprietary products. This was done primarily through TIAA wealth advisors, whose compensation was partially determined by the sale of complex products outside the retirement plans, including **TIAA IRAs**, insurance products, and wealth management.

B. ENTERS MORNINGSTAR

In or about 2013, TIAA partnered with **Morningstar** to create an advice and planning tool known as the Retirement Advisor Field View ("**RAFV**"). The RAFV is framed as a tool to help participants with various risk tolerances determine how to allocate their in-plan investments to achieve their retirement goals. It asks participants a series of questions seeking certain information, such as current salary, total net worth, planned retirement age, and marital status. Based on these and other factors, the RAFV tool estimates an after-tax, monthly retirement income goal for the participant.

In many instances, by design, the RAFV tool will show that the participant is not on track to meet the monthly income goal with their current investment allocations. When that happens, the tool generates recommendations for how the participant can change their plan investments and/or their investment allocations to generate higher estimated income in retirement.

Morningstar provides the model portfolios recommended to participants, based on a given plan's investment lineup. Morningstar and TIAA both accept that the investment recommendations generated by the RAFV tool involve fiduciary conduct under ERISA § 3(21)[7], and are subject to ERISA's fiduciary responsibility provisions. Defendants describe Morningstar as an "independent financial expert"[8] to TIAA.

C. THE CENTERPIECE STRATEGY: RAFV

The RAFV tool generates recommendations for how a participant's assets should be allocated among approximately 16 different asset categories, including direct real estate and guaranteed income (i.e. annuity). The recommended allocations vary across seven different risk-based scenarios: (1) very conservative; (2) conservative; (3) moderately conservative; (4) moderate; (5) moderately aggressive; (6) aggressive; and (7) very aggressive.

TIAA uses the RAFV tool in its advice service and in managed accounts that charge an additional fee. TIAA utilizes the RAFV tool in two optional services available to its client plans: **RA** and **RPPM**.

Rather than operating in its proclaimed role as an independent expert, Morningstar allowed TIAA to have substantial input in the development of the RAFV tool, to favor TIAA's own proprietary products. At TIAA's direction, Morningstar custom designed the RAFV tool to include two unconventional investment categories that Morningstar does not use with any other client: guaranteed income and direct real estate.

(1) The guaranteed income category comprises investments that provide a guaranteed payout, such as fixed annuities. In the RAFV tool, the only investment option available in the guaranteed income category is the **TIAA Traditional Annuity**.
(2) The "direct real estate" category consists of funds that invest directly in commercial real estate; funds with indirect ownership, such as real estate investment trusts (REITs), have their own category. Morningstar agreed to create this new category knowing that, in the RAFV tool, the only investment option available in the "direct real estate" category is the **TIAA Real Estate Account**.

By design, and regardless of a client's age, income goal, risk tolerance, or expected retirement date, the RAFV tool (marketed to clients as "objective" and "unbiased") will recommend an 8% or 9% allocation to the TIAA Real Estate Account in all 7 risk-based scenarios, and an allocation to the TIAA Traditional Annuity ranging from 7% to 40% in 6 out of 7 scenarios. The TIAA Real Estate

[7] 29 U.S.C. § 1002(21)
[8] U.S. Department of Labor Advisory Opinion 2001-09A

Account and the TIAA Traditional Annuity are the only two investment options that are "hardcoded" in this way into the RAFV tool. In all other categories, there are multiple investment options, including non-proprietary products, which could be recommended.

D. SELF HELP – THE RV PROGRAM

In the RA program, TIAA and Morningstar provide investment recommendations generated by the RAFV tool, and it is up to the participant to decide whether or not to implement the recommended changes. Clients using the RAFV tool to change their portfolio must accept all its suggestions. The costs of the RA service are included in the fees charged to the plan; participants do not have to pay any additional fees to utilize the RA service.

E. A MANAGED ACCOUNT – RPPM

RPPM is a managed account service administered by TIAA Trust. Participants hire TIAA to make the recommended changes generated by the RAFV tool on their behalf, along with any future adjustments that may be warranted. In the RPPM program, Morningstar accepts ERISA 3(21) fiduciary responsibility for the investment recommendations generated by the RAFV tool, and TIAA accepts ERISA 3(38) fiduciary responsibility as a discretionary investment manager. Participants pay extra asset-based fees to enroll in the RPPM service, typically 30 basis points, which are paid directly or indirectly to Defendants.

For both RA and RPPM services, Morningstar uses the RAFV tool to build portfolios and makes recommendations on asset classes and fund selections using the plans' existing lineups. TIAA induces plan sponsors to advertise and promote the RA and RPPM services to their participants, which encourages participants to trust Defendants' investment advice. This is particularly true because participants know their employer has already chosen TIAA to be the recordkeeper for their plan.

TIAA benefits financially from the fact that the TIAA Traditional Annuity is "illiquid" in 3 contract types (RA, GRA, and RC). The illiquidity comes from the onerous restrictions TIAA imposes on withdrawals, locking up the funds for up to 10-years, with no ability of participants to remove their money from the fund without significant penalties. This helps ensure that participant savings remain invested and generate income for TIAA. It is an effective method of "asset retention."

F. THE FOOT SOLDERS – TIAA TRAINING & INCENTIVIZES

In 2022, TIAA began placing a greater emphasis on TIAA Traditional Annuity in-flows in determining annual bonuses for its senior executives. That same year TIAA changed the compensation structure of its financial consultants to make their bonuses dependent in part on the number of clients they convinced to implement the RAFV tool's recommendations. By 2023, as part of their variable compensation "Ticket to Entry," TIAA financial consultants were required to complete "170 RAFV implementations" in order to "activate scorecard points," which represented 20% of the consultants' year-end "grade" or performance evaluation. Those who failed to meet their annual minimum implementation goal (i.e., quota) of RAFV implementations would receive zero points in that category, which would impact their "stack ranking," resulting in significantly reduced variable compensation at the end of the year. By October 2023, TIAA communicated its expectation that financial consultants should complete "5 RAFV Implementations per week." In direct contravention of TIAA's fiduciary duty to work for the exclusive benefit of participants and not for its own interests, TIAA told employees that the company could secure its future and offset its losses by selling in-house products to plan participants.

Beginning in or about January 2023, TIAA launched an extensive 30-hour training program known internally as "A New Day for Financial Consultants." Hundreds of TIAA financial consultants participated. The objective of was to more effectively encourage participants to "take action" and adopt the recommendations of the RAFV tool, increasing the number of RAFV implementations. Using the client engagement model, TIAA taught its financial consultants how to use certain phrases and approaches to secure participants' commitment to implement the investment recommendations of the RAFV tool.

G. THE PITCH – RPPM

TIAA describes its RPPM service as "personalized retirement income planning and investment management, powered by Morningstar's independent, third-party advice." According to TIAA, "[t]he advice, regular reviews and feedback it offers is backed by independent advice from Morningstar." TIAA's representations to plan participants that the investment advice generated by the RAFV tool is unbiased and independent. TIAA has failed to adequately provide a full and fair disclosure of the following material facts:

- TIAA partnered directly with Morningstar to modify the tool for TIAA's client plans, to ensure that it always or nearly always recommends allocations to the TIAA Traditional Annuity and the TIAA Real Estate Account.
- TIAA's own proprietary annuities—the TIAA Traditional Annuity and the TIAA Real Estate Account—are the only investment options hard-coded into the RAFV tool; there are no alternative investment options available within the RAFV tool for their respective asset classes.
- The financial consultation that includes the supposedly unbiased, objective advice generated by the RAFV tool is carefully scripted to maximize the likelihood of inducing plan participants to increase their allocations to TIAA products, for the financial benefit of TIAA and TIAA's financial consultants.
- TIAA financial consultants are financially incentivized to persuade the participants in their client plans to implement the RAFV tool's recommendations.
- The RAFV tool has become the centerpiece of a concerted, nationwide effort by TIAA to increase investment in the TIAA Traditional Annuity and the TIAA Real Estate Account, for TIAA's financial benefit.

CAUSES OF ACTION

COUNT I: Breach of the Fiduciary Duty of Loyalty[9]
COUNT II: Breach of the Fiduciary Duty of Prudence[10]
COUNT III: Prohibited Transactions[11]
COUNT IV: Unlawful Receipt of Ill-Gotten Profits[12]
COUNT V: Breach of Common Law Fiduciary Duty - New York Common Law

[9] 29 U.S.C. § 1104(a)(1)(A); 29 U.S.C. § 1109(a)
[10] 29 U.S.C. § 1104(a)(1)(A); 29 U.S.C. § 1109(a)
[11] 29 U.S.C. § 1106(b)(1)
[12] 29 U.S.C. § 1132(a)(3)