

Richard G. Thissen
National President



Jon Dowie
National Secretary/Treasurer

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: RIN 1210-AB32, Proposed Department of Labor Rule on Definition of the Term “Fiduciary”; Conflict of Interest Rule – Retirement Investment Advice

To Whom It May Concern:

On behalf of the five million federal employees and annuitants represented by the National Active and Retired Federal Employees Association (NARFE), I am writing to express support for the Department of Labor’s Conflict of Interest Rule Proposal, RIN 1210-AB32, which proposes regulatory changes to defining who is a “fiduciary” of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA), as well as who is a “fiduciary” of a plan (including an individual retirement account (IRA)) under section 4975 of the Internal Revenue Code of 1986, as a result of giving investment advice to a plan or its participants or beneficiaries.

The proposed rule will protect individuals, including federal employees and retirees, from receiving unsound retirement investment advice. If finalized, the rule should result in better investments and/or lower fees and, therefore, in greater returns on the hard-earned retirement savings of millions of Americans.

The proposed rule updates the definition of “fiduciary investment advice” under the Employee Retirement Income Security Act (ERISA) to ensure individuals saving for retirement are protected by a “best interest standard” when receiving investment advice. Under the current rule, the best interest standard does not apply to advice given on a one-time basis, advice regarding rollovers or any advice on investing in an IRA. Instead, such advice is often subject only to an extremely weak “suitability” standard, which allows financial advisers to provide recommendations that serve their own interests instead of the clients’ best interests. The adviser may receive a better commission, but the investor may be subject to excessive costs, poor performance and even unnecessary risk.

NARFE is particularly concerned that federal employees and retirees invested in low-fee Thrift Savings Plan (TSP) funds – the federal government’s version of a 401(k) for federal civilian employees and military personnel – currently are not adequately protected from bad financial advice regarding their TSP holdings. Because rollovers are not covered by the existing definition of fiduciary investment advice, financial advisers may legally recommend that TSP account holders roll over their TSP holdings into an IRA, where the money could be invested in mutual

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funds providing the same, or essentially similar, products, such as an S&P 500 index fund, for as much as 50 times the cost. Due to economies of scale, TSP funds charge very low administrative fees – on average, 0.029 percent – that are far cheaper than alternatives that provide the same, or essentially similar, returns.

The lack of legal protection is having real-world implications for federal employees and retirees. In fact, as reported by *The Washington Post* in August 2014, when a former federal employee (and pension expert) went undercover to seek advice regarding his TSP holdings, eight out of nine major investment firms told him to roll over his TSP funds into IRAs providing the same or similar investments as offered by the TSP for a substantially higher cost. That is the very definition of bad advice. Even though it meets a “suitability” standard, it meets the needs of the adviser only, not the investor.

While there are some legitimate reasons to roll over TSP holdings into an IRA – e.g., higher tolerance for risk, investment in some asset types not available in the TSP funds – in most cases, federal employees and retirees are better off leaving their money in the TSP. Yet, more than 50 percent of TSP participants removed their funds from the TSP within a year of when they separated from service, according to the latest report by the Federal Retirement Thrift Investment Board (FRTIB). That number is worrisome given the low costs of TSP investments, and it speaks to the prevalence of the bad advice that federal employees and retirees are receiving.

It's time to close the loophole in the definition of a “fiduciary” and ensure a high standard that holds anyone who gives financial advice genuinely accountable for helping everyday Americans choose the best retirement investments. This rule will ensure that all financial professionals who offer retirement investment advice must follow the same rules to make recommendations designed to serve the best interests of consumers by keeping costs low, recommending sound investments, and protecting retirement savings from unnecessary risks. Americans who've worked hard to save for retirement deserve peace of mind about their financial security.

For these reasons, NARFE supports the proposed rule and asks the Department of Labor to finalize it.

Thank you for considering NARFE's views. To discuss this further, please contact NARFE's Deputy Legislative Director John Hatton at jhatton@narfe.org or 703-838-7760.

Sincerely,



Richard G. Thissen
National President