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To: EBSA, E-ORI - EBSA
Subject: RIN 1210-AB32

Please see the attached written testimony from NARFE President Richard Thissen for the August hearings, submitted as additional comments.

Thanks,

John Hatton
Deputy Legislative Director
National Active and Retired Federal Employees Association (NARFE)



**WRITTEN TESTIMONY BY
RICHARD G. THISEN
NATIONAL PRESIDENT
NATIONAL ACTIVE AND RETIRED FEDERAL
EMPLOYEES ASSOCIATION**

**BEFORE
THE DEPARTMENT OF LABOR,
EMPLOYEE BENEFITS SECURITY ADMINISTRATION**

**PUBLIC HEARING RE: RIN 1210-AB32, PROPOSED
DEPARTMENT OF LABOR RULE ON DEFINITION OF THE
TERM “FIDUCIARY”; CONFLICT OF INTEREST RULE –
RETIREMENT INVESTMENT ADVICE**

AUGUST 12, 2015

On behalf of the five million federal workers and annuitants represented by the National Active and Retired Federal Employees Association (NARFE), I appreciate the opportunity to express our support for the Department of Labor's Conflict of Interest Rule Proposal, RIN 1210-AB32.

The rule 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.

NARFE believes 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, lead to greater returns on the hard-earned retirement savings of millions of Americans.

Specifically, the proposed rule updates the definition of "fiduciary investment advice" under 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 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 their 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.

Protecting Thrift Savings Plan (TSP) Participants

NARFE is particularly concerned that federal employees and retirees, as well as uniformed service members, invested in low-fee Thrift Savings Plan (TSP) funds currently are not adequately protected from bad financial advice regarding their TSP holdings.

The defined contribution Thrift Savings Plan is the primary means of retirement savings for most federal employees. It also is open to members of the military looking to save for their future beyond their military pension. For service men and women who serve less than 20 years, the TSP may be their only retirement savings while in uniform. Nearly half of all current active duty uniformed personnel, or more than 700,000 individuals, are invested in the TSP, a number that is growing with each passing year and does not include those with balances who have since separated from the military.

The TSP offers the same types of savings and tax benefits that many private corporations offer their employees under 401(k) plans. Frequently hailed as one of the best-managed retirement plans in the world, it boasts more than 4.7 million participants and a balance of more than \$454 billion. The importance of protecting this substantial balance of retirement savings for both federal civilian employees and retirees, as well as current and former members of the military, is profound.

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 may be invested in the same, or essentially similar, products, such as an S&P 500 index mutual fund, for as much as 20 times the cost. Due to economies of scale, TSP funds charge very low administrative fees – on average, 0.029 percent. Investing in these funds is 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 for a substantially higher cost.¹ That is the very definition of bad advice. Even though it meets a “suitability” standard, it serves the interests of the adviser only, not the investor.

While there are some legitimate reasons an investor might seek to roll over TSP holdings into an IRA – including the investor’s higher tolerance for risk, a desire to invest in some asset types not available in the TSP funds, and wanting expanded withdrawal options – 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). In 2013, separated participants (those who retired or who otherwise left federal service) transferred \$9 billion out of the TSP and into other financial institutions. Most, if not all, of this \$9 billion was moved into accounts with much higher administrative fees. The question is why. We believe it speaks strongly to the prevalence of the bad advice being given to federal employees and retirees.

We have heard from many NARFE members who removed their money from the TSP, only to later regret the decision. In response to a survey of our members, here are a few examples of what they had to say:

- “Upon advice of my Merrill Lynch financial adviser, I transferred my TSP to an IRA at Merrill. Merrill sold me two annuities with my money. I would have done better with the TSP in the C Fund... Be careful. There are advantages to transferring a TSP to a retirement account, but the TSP is pretty hard to beat.”
- “I did not receive any information prior to my withdrawal. I received very bad advice from a financial adviser regarding withdrawing my TSP. In hindsight, [I] probably would have left the TSP in place.”
- “I had no idea I could leave my money in the TSP after retirement. With regard to my TSP, no out-processing services were offered and, regrettably, I didn’t ask questions. I

¹ “As brokers urge IRA rollovers, ex-workers ditch their low fee federal retirement plan,” *The Washington Post*, August 14, 2014, available at: http://www.washingtonpost.com/business/as-brokers-urge-ira-rollovers-ex-workers-ditch-their-low-fee-federal-retirement-plan/2014/08/14/53c68dd0-2239-11e4-958c-268a320a60ce_story.html.

wish I had spoken to a certified financial adviser to evaluate how/where to invest my TSP so it would be safe and grow.”

- “I retired in January 2008 and chose to withdraw the full amount of my TSP account in November 2011. The money was invested but has only grown by 9 percent as compared to the TSP’s C, S [and] I Funds, which have averaged an increase of 18-26 percent from August 2012-September 2013. I regret not staying in the TSP program.”

This is just a few examples from those who recognized that they did not make the best decision. Still others may be paying more for similar products unnecessarily without knowing it.

Rejection of Industry Counterarguments

NARFE has considered the counterarguments being made against the proposed rule by some in the financial services industry and found them lacking. In many cases, financial industry representatives claim they support a best interest standard in one breath, only to reject the idea of implementing it in the next. They claim that advice is and should be made in their clients’ best interests, but if they were actually held to that standard, they no longer would be able to provide the same advice. If that is the case, we question whether that is advice worth paying for, regardless of whether you are a high-, middle- or low-income client. With regard to advice to federal employees or retirees to move money out of their TSP accounts into IRAs, where they are paying higher fees for a similar product, we certainly do not believe it is.

Additionally, NARFE does not view as credible the claim that low- and middle-income clients no longer will have access to investment advice if this rule and its exemptions are implemented. Right now, according to the Investment Adviser Association (IAA), investment advisers held to a fiduciary standard advise or manage \$67 trillion through 11,473 Registered Investment Adviser firms, including 750,000 individuals serving 30 million clients. Furthermore, a more restrictive regulatory scheme – one that outlaws commissions altogether – implemented in the United Kingdom did not cause small accounts to lose access to advisory services.

We believe the Department of Labor has taken a practical and flexible approach by providing exemptions designed to accommodate a range of existing and evolving business and compensation models, including commission and sales-fee-based compensation. Some financial industry representatives claim these exemptions are unworkable. Here again, what they seem to be saying is it would be unworkable to provide advice that is in the best interests of their clients.

To the extent that financial industry representatives or others have good ideas for lowering compliance costs, improving the clarity of the rule and/or its exemptions, or increasing flexibility without undermining the basic premise of ensuring that financial investment advice is held to a best interest standard, we think those ideas should be carefully considered. But the primary question at hand – whether to ensure a meaningful and enforceable best interest standard – should not be in doubt.

Conclusion

It's time to close the loophole in the definition of a "fiduciary" and ensure that anyone who offers retirement investment advice is held to a high standard. Americans who have worked hard to save for retirement deserve investment advice that puts their financial security first.

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

Thank you again for the opportunity to share our views with you.