A Union of Professionals

American Federation of Teachers, AFL-CIO

AFT Teachers
AFT PSRP
AFT Higher Education
AFT Public Employees
AFT Nurses and Health Professionals

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March 17, 2017

Submitted via email: *EBSA.FiduciaryRuleExamination@dol.gov*

Office of Regulations and Interpretations
Employee Benefits Security Administration
ATTN: Fiduciary Rule Examination
U.S. Department of Labor, Room N-5655
200 Constitution Ave. N.W.
Washington, DC 20210

Re: Definition of the Term "Fiduciary"; Conflict of Interest Rule—
Retirement Investment Advice; Best Interest Contract Exemption;
Class Exemption for Principal Transactions in Certain Assets between
Investment Advice Fiduciaries and Employee Benefit Plans and IRAs;
Prohibited Transaction Exemptions

RIN 1210-AB79

Dear Ladies and Gentlemen:

On behalf of the 1.6 million members of the American Federation of Teachers (AFT), I write to oppose any efforts to delay, revise or rescind the Department of Labor's Fiduciary Duty Rule, which ensures that retirees receive investment advice that is in their best interest, rather than advice that is simply the most financially rewarding for their investment advisers. The AFT is a national labor union representing educators; nurses and health professionals; and state and local government workers. Our union has a vital interest in ensuring that the retirement security of our members is protected.

On Feb. 3, 2017, President Donald Trump issued an executive order directing the Department of Labor to re-examine the fiduciary rule and consider whether it should be delayed, revised or rescinded. Any of these changes will harm retirement savers while keeping high and hidden compensation schemes in place for insurance brokers and other financial marketers. The AFT urges the department to implement the fiduciary rule on schedule as written. Such action will require all those involved in financial sales to put their clients' interests ahead of their own.

The replacement of defined-benefit pension plans in the private sector by 401(k) plans and individual retirement accounts (IRAs) has transferred responsibility for investment decisions from employer to employee/retiree. When the Employment Retirement Security Act (ERISA) was created in 1974, IRAs only held about $3 billion in assets, and 401(k) plans did not exist. Today, most private sector workers are covered by 401(k) plans in which investment and longevity risks are borne by participants. Moreover, asset allocation and payout decisions are made by the plan participant as well. In view of these developments, we applauded the department's decision to update the fiduciary standard.

IRAs are mainly funded by 401(k), 403(b) and 457 plan rollovers and now contain $7.4 trillion in assets, more than the $5.4 trillion in 401(k)s. Because IRAs are not employer-sponsored plans, they are not subject to the same fiduciary standard as ERISA plans. Without meaningful protections against adviser conflicts of interest, participants may be pushed by conflicted advisers to leave retirement plans for IRAs with high fees and underperforming investment choices, resulting in low returns and damaged financial security. The fiduciary rule expands protections when funds are rolled over to an IRA—especially the duty of prudence and loyalty that puts the interests of the participant/beneficiary ahead of the interests of brokers and investment advisers.

A Feb. 14, 2014, *Wall Street Journal* article provided stark examples of how financial advisers can be incentivized to recommend one investment product over another. In one instance, financial advisers were offered a new Maserati for selling their clients at least $7.5 million in the company's recommended investment products; a BMW, Range Rover or Porsche was offered to those who hit at least $6 million in sales. Such incentives help explain why so many advisers are conflicted when recommending rollovers and investments into IRAs. Applying the fiduciary rule to brokers and insurance agents will prevent abuses like excessive gifts or commissions and investment churning for financial advisers' gain.

How bad is the conflict of interest? The Council of Economic Advisers recently determined that these conflicts of interest led to a loss for participant/investors of about 1 percent or $17 billion per year. This reflects both high fees and below-market returns.[1] A recent Employee Benefits Security AdministrationFact Sheet[2]

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[1] Council of Economic Advisers, 2015, "The Effects of Conflicted Investment Advice on Retirement Savings."

[2] See www.dol.gov/protectyoursavings/FactSheetCOI.

reported that a 1 percent lower return could reduce a participant's lifetime savings account by one-fourth over a 35-year career.

The fiduciary rule is a much higher standard than the suitability standard previously required of financial sales representatives. Suitability meant that as long as an investment recommendation met a client's investment goals, it was deemed appropriate. The wiggle room provided by the suitability standard would let an agent or broker recommend a higher-commissioned investment for a client, when other less-expensive investments in the same asset class with the same risk and return characteristics were also available for purchase.

Many in the financial services industry support the new fiduciary rule and have already made plans to incorporate it into their practices. For example, the Financial Planning Coalition, which is made up of the Certified Financial Planner Board of Standards Inc., the Financial Planning Association and the National Association of Personal Financial Advisors, applauded the Department of Labor for its commitment to retirement savers when the rule was published last year. This same coalition recently wrote that the decision to delay implementation of the rule gives the green light to maintaining the status quo of conflicted financial advice.

One of the arguments financial industry lobbyists make most often against the fiduciary rule is that it could unfairly impact smaller and independent retirement advisers. However, we believe that it is reasonable to expect every broker, agent or planner to at least mitigate harmful conflicts of interest and to justify any recommended investment involving retirement savings by:

- Communicating the reasoning for any recommended investment clearly and truthfully;
- Disclosing all conflicts of interest;
- Explaining payments to the adviser or the firm from any third party resulting from the adviser's recommendations;
- Explaining the difference in the gross and net risk/return trade-off between similar investments; and
- Letting the consumer choose between alternative compensation structures like fee-only arrangements, or commission constructions on different investments.

Once conflicts of interest have been addressed, and fees and risk/return trade-offs are fully explained, we believe that consumers will be able to make the correct elections.

For all these reasons, we urge you to implement the fiduciary rule as currently written.

Thank you for considering these comments.

Sincerely,

Randi Weingarten
President
American Federation of Teachers

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