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

555 New Jersey Ave. N.W.
Washington, DC 20001
202-879-4400
www.aft.org

July 21, 2017

Office of Exemption Determinations
Employee Benefits Security Administration
ATTN: D-11933
U.S. Department of Labor
200 Constitution Ave. N.W.
Suite 400
Washington, DC 20210

RE: Request for Information Regarding the Fiduciary Rule and Prohibited Transactions Exemptions

RIN 1210-AB82

Dear Ladies and Gentlemen:

On behalf of the 1.6 million members of the American Federation of Teachers, I am writing to object to Department of Labor consideration of any delay in the Jan. 1, 2018, implementation date to the fiduciary rule or the prohibited transaction exemptions. This delay was proposed in the July 6, 2017, Request for Information published in the Federal Register. In view of the retirement security crisis facing our country, any delay in implementing the Department of Labor rules will harm retirement savers.

The Department of Labor published the fiduciary rule and related prohibited transaction exemptions on April 8, 2016, after concluding that retirement investors were substantially harmed by conflicted investment advice. The secretary and his staff concluded that the changes the department was adopting would improve the retirement security prospects for working people and retirees. We know of no new evidence that has come to light since that date that would change the department's findings or conclusions. We therefore urge the department to implement the existing regulations without change on Jan. 1, 2018.

The department employed a very thoughtful and comprehensive process that included the views of all stakeholders over a six-year period that comprised many meetings and four days of hearings before reaching its conclusions. Over the course of this endeavor, both financial service providers and financial service consumers agreed on this general principle: Investment advice should be given in the best interest of the plan participant and not the adviser. For example, the American Council of Life Insurers' July 21, 2015, comment letter to the Department of Labor stated, in part, "We share the Department's interest in seeing that plan sponsors, plan participants and IRA owners receive advice that is in their best interest."[1] In its 2015 comment letter to department, the Insured Retirement Institute wrote, "Financial professionals should be held to a best interest standard when recommending investments to retirement savers."[2] This consensus of opinion that treating those who provide investment advice for a fee as fiduciaries is consistent with the law and what is generally taken as a given by participant investors.

In addition, a number of major companies like Schwab, Fidelity and BlackRock announced plans to cut the costs of some investment products like exchange-traded funds and mutual funds in order to be more competitive under the Department of Labor rule.[3] Charles Schwab recently announced a new advisory program with a minimum investment of $25,000 and all-in costs of between 0.36 percent and 0.52 percent that includes financial and investment planning with a certified financial planner.[4] Moreover, recent financial services industry innovations of new products like "clean shares"[5] and "T shares"[6] will help lower commissions and fees and reduce compensation-related conflicts of interest associated with these funds. Any delay in the implementation of these positive responses to the Department of Labor rule, in response to a delay in the Jan. 1, 2018, implementation date, will harm retirement savers. In the worst instance, it could lead financial service providers to undo these pro-investor initiatives to recoup sunken costs in these efforts.

Since the retirement investment advice rules were first promulgated in 1975, the retirement plan landscape has dramatically changed. At that time, individual retirement accounts only held about $3 billion in assets, and 401(k) plans did not exist. Today, IRAs hold the most money of any retirement savings vehicle, with $8.3 trillion in assets as of March 2017. The accumulation of such a vast sum comes from individual account rollovers from 401(k), 403(b) and 457 plans, and even some defined benefit plan participants who change jobs and retire.

As 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—requiring financial advisers who make investment recommendations to put the best interest of retirement savers

---

[1] American Council of Life Insurers, comment letter to Department of Labor, July 21, 2015.
[2] American Council of Life Insurers, comment letter to Department of Labor, July 21, 2015.
[3] Consumer Federation of America, "Department of Labor Conflict of Interest Rule Is Already Delivering Benefits to Workers and Retirees: Delay Puts Those Benefits at Risk," January 31, 2017.
[4] Michael Wursthorn, "Brokerages Adapt to Pending Labor Rule," *Wall Street Journal*, March 16, 2016.
[5] John Waggoner, "American Funds Gets SEC Approval for Clean Shares," *InvestmentNews*, January 13, 2017
[6] John Rekenthaler, "Lower-Cost T Shares Coming to a Fund Near You," *Morningstar Advisor*, January 6, 2017.

first, and eliminate or substantially lessen any financial conflicts that could interfere with their duty of loyalty.

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.[7] 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 a financial adviser's 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.[8] A 2013 Employee Benefits Security Administration Publication entitled "A Look at 401(k) Plan Fees"[9] reported that a 1 percent increase in fees could reduce a participant's lifetime savings account by more than one-fourth over a 35-year career.

The Request for Information raises a series of questions related to creating new exemptions for financial advisers and watering down the proposed rule. The department has previously provided clarification on specific questions for investment advisers that speak for themselves. For example, a January 2017 Department of Labor FAQ points out those adviser recommendations to increase contributions to a plan or IRA[10] would be considered educational in nature and not trigger a fiduciary obligation. Adding more exemptions and loopholes to the rule works against retirement savers' interests in getting conflict-free advice.

The AFT believes and expects that anyone who provides investment advice for a fee, regardless of his or her title, should be required to provide objective, client-specific advice about the benefit and cost of each recommended investment. We

---

[7] Jason Zweig, "Who's Training Your Retirement Navigator?" *Wall Street Journal*, February 14, 2014.

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

[9] See Employee Benefits Security Administration, U.S. Department of Labor, "A Look at 401(k) Plan Fees," August 2013, www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/a-look-at-401k-plan-fees.pdf.

[10] Employee Benefits Security Administration, U.S. Department of Labor, "Conflict of Interest FAQs (Part II—Rule)," Questions 9-11, January 2017, www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/coi-rules-and-exemptions-part-2.pdf.

also believe that the adviser should disclose all conflicts of interest and provide retirement savers with similar product offerings that have lower fees. At the same time, advisers should be required to eliminate or substantially lessen any and all conflicts of interest. In short, we believe that investment advisers should always put their clients' interests ahead of their own, regardless of how they get paid.

The AFT firmly believes that the Department of Labor fiduciary rule meets 21st-century retirement saver needs, and we urge the department to implement it without any further delay or modification.

Thank you for considering these comments.

Sincerely,

Randi Weingarten
President
American Federation of Teachers

RW : ls opeiu#2 afl-cio