



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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September 24, 2015

Submitted via email: e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
ATTN: Conflict of Interest Rule
U.S. Department of Labor, Room N-5655
200 Constitution Avenue NW
Washington, DC 20210

Re: Definition of the Term “Fiduciary” --Conflict of Interest Rule
Retirement Investment Advice; Proposed Rule
RIN 1210-AB32

Dear Ladies and Gentlemen:

The American Federation of Teachers (AFT) is pleased to submit comments on the Department of Labor’s (DOL) proposal to revise the definition of “fiduciary” of an employee benefit plan under the Employee Retirement Income Security Act (ERISA). As a national labor union representing 1.6 million educators, hospital workers, and state and local government workers, AFT has a vital interest in seeing that the retirement security of our members is protected.

Individual Retirement Accounts (IRAs) are one of the leading vehicles for retirement savings in our country, currently accounting for \$7.4 trillion in assets. The primary reason for the growth of IRA assets is rollovers of lump sum and partial lump sum distributions from ERISA and non-ERISA plans, including 403(b)’s and 457’s, into IRA’s. Yet, DOL’s current guidance excludes virtually all distribution recommendations from the regulatory definition of fiduciary investment advice, even when that advice is combined with recommendations about how to invest a distribution through an IRA. As a result participants can be steered out of retirement plans and be shifted to IRAs with high fees and inferior returns by financial advisers who are not required to act in the retiree’s best interests. We therefore strongly support the DOL proposal to extend the fiduciary definition to include recommendations made to plan participants to withdraw or roll over assets from a plan, regardless of whether the plan is an ERISA covered plan, and invest them in an IRA, as well as recommendations about how to allocate assets inside the IRA.

The **American Federation of Teachers** is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.



The decision on whether to take a lump sum distribution from a pension plan can have an important effect on a participant's retirement security. For many, deciding what to do with the accumulated funds in their 401(k), 403 (b) or 457 account is one of the most important decisions they will make regarding their living standards in retirement. In the worst cases, the recommendation to move assets from a 401(k), 403(b) or 457 plan to an IRA can lead to a loss of plan benefits, higher fees, investment options with poor returns, and a lower standard of living.

The impact of such a decision can also be especially harmful in a defined benefit pension plan where the participant gives up the right to an annuity benefit for life, as well as the joint and survivor annuity. While there may be situations where a lump sum or partial lump sum may be warranted, in many cases such a distribution can put the retirement security of the worker and their spouse in jeopardy. Moreover, the decision to take a lump sum distribution from a defined benefit pension at retirement may lead to a loss of other valuable benefits like retiree health care and a COLA.

Some brokers, agents, and advisors are provided incentives to recommend, and in some cases direct rolled over assets into specific investments, without regard to the worker's best interests. According to a White House Council of Economic Advisers analysis, these conflicts of interest have led to annual losses of about \$17 billion per year in lost retirement security. Therefore requiring that the investment advisor, insurance agent or broker who recommends such a move have a fiduciary duty to act in the best interests of retirement investors and that an advisor's financial conflicts of interest be eliminated or mitigated are of critical importance. Moreover, once the money is transferred to the IRA, we agree that the advisor should have a continuing duty to make recommendations that are in the best interests of the retirement investor.

We appreciate the opportunity to comment on the proposal and thank the DOL for developing this new framework for defining a fiduciary in today's world.

Sincerely,

John D. Abraham
Manager, Research and Strategic Initiatives Department
American Federation of Teachers