



Founded 1889

*United Association* of Journeymen and Apprentices of the  
Plumbing and Pipe Fitting Industry of the United States and Canada

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Submitted electronically at Federal eRulemaking Portal:  
<https://www.regulations.gov/comment?D=EBSA-2010-0050-3491>*

Office of Regulations and Interpretations  
Employee Benefit Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210  
Attn: Fiduciary Rule Examination

**Re: RIN 1210-AB79  
Definition of the Term “Fiduciary”; Conflict of Interest Rule—Retirement Investment  
Advice; Best Interest Contract Exemption (Prohibited Transaction Exemption 2016-01);  
Class Exemption for Principal Transactions in Certain Assets between Investment Advice  
Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016-  
02); Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, 84-24 and 86-128  
Proposed rule; extension of applicability date.**

Dear Sir or Madam:

These comments are filed by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (“UA”) in response to the request for public comments on the Employee Benefits Security Administration’s (“EBSA”) proposed rule to extend for 60 days the applicability date defining who is a “fiduciary” under the Employee Retirement Security Act (“ERISA”) and the Internal Revenue Code of 1986 (“Code”), and the applicability date of the related prohibited transaction exemption known as the Best Interest Contract Exemption. For the reasons set forth below, the UA strongly opposes any extension of the applicability dates of EBSA’s Final Rule, entitled Definition of the Term “Fiduciary;” Conflict of Interest Rule—Retirement Investment Advice (“Investment Advice Rule”) and the related Class Exemption entitled Best Interest Contract Exemption (“BIC Exemption”).

**Extension of the Applicability Date Is Not Necessary.**

We believe that those impacted by the Investment Advice Rule and the BIC Exemption will have more than enough time to comply with the rule’s and the exemption’s requirements by April 10,





2017. The Investment Advice Rule and the BIC Exemption were published nearly one year ago.<sup>1</sup> The Investment Advice Rule's effective date and the BIC Exemption's issuance date were June 7, 2016, and they are set to be applicable on April 10, 2017. Moreover, the BIC Exemption provides a phased implementation approach whereby financial advisers and financial institutions are not required to be in full compliance with the BIC Exemption until January 1, 2018. Therefore, we can see no reason why responsible financial advisers and financial institutions need additional time to comply with the Investment Advice Rule and BIC Exemption.

In fact, based on all I have heard from plan professionals, retirement planning experts and individuals who represent the interests of those reputable financial advisers and financial institutions most impacted by the Investment Advice Rule and the BIC Exemption, it is my understanding that reputable financial advisers and financial institutions have taken all the necessary steps to be ready on April 8, 2017 to fully comply with the Investment Advice Rule and BIC Exemption.

At the same time, we fear that any delay of these important protections will only lead to a frustrating pattern of further delay and ultimate rescission of the Investment Advice Rule and the BIC Exemption. This would be a lost opportunity to improve the likelihood that millions of Americans will have the "ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses, such as buying home and paying for college, and to withstand unexpected financial emergencies."<sup>2</sup>

**The Investment Advice Rule and BIC Exemption Provide Much Needed Protection to the Millions of Americans Who Participate in 401(k) and other Individual Account Type Retirement Plans.**

The UA represents over 300,000 men and women in the plumbing and pipefitting industry across North America. A substantial number of these men and women rely on 401(k), and other individual account type retirement plans to provide a significant portion of their retirement security. Throughout their working careers, our members' benefits accumulate in plans administered by boards of trustees and other named fiduciaries who use the bargaining power and size of these plans to retain investment advisers and investment managers subject to the fiduciary standard of care set forth in ERISA Section 404; that is, a continuing obligation to discharge their responsibilities solely in the interest of the plans' participants and beneficiaries with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use.

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<sup>1</sup> In fact, financial advisers and financial institutions were first put on notice of EBSA's desire to expand the definition of what constitutes the rendering of "investment advice" under ERISA Section 3(21) on October 22, 2010 when EBSA issued its first NPRM on the Definition of the Term "Fiduciary" (75 Fed. Reg. 65263 (Oct. 22, 2010)). On April 20, 2015, EBSA would issue another NPRM on the Definition of the Term "Fiduciary"; Conflict of Interest Rule-Retirement Investment Advice and its Proposed Best Interest Contract Exemption (80 Fed. Reg. 21928 (Apr. 20, 2015)).

<sup>2</sup> Presidential Memorandum on Fiduciary Duty (<https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule>)



Personally, I have served and continue to serve as a trustee on retirement plans governed by ERISA. Separate and apart from my obligations as General President of the UA, my duties as a trustee of ERISA-governed retirement plans has provided me with firsthand insight into the wisdom Congress demonstrated when it held trustees, investment advisers and investment managers to the high standard of care we know as the ERISA fiduciary standard. And yet, as UA members and the millions of other Americans who participate in 401(k) and other individual account type retirement plans approach retirement and consider their options with regard to the years of savings they have accumulated in their individual accounts, many of them are confronted with information and choices from brokers, insurance agents and other would-be financial planners who are not bound by a standard of care that requires these individuals to act solely in the interest of their clients and who are not subject to the ERISA prudence standard. In the interest of millions of Americans who will need to make difficult and life-changing choices regarding what is often the most significant piece of their retirement savings, we believe financial advisers who provide services to individuals should be held to the ERISA standard.

The current reality for UA members and the millions of other American workers approaching retirement who must make the all-important determination of whether, when and where to rollover their individual accounts from their ERISA governed plans to IRAs, annuities and other retirement vehicles is that they are often inundated with cold calls and internet ads that promote the virtues of high fee IRAs over the low fee investment choices of their current plan. The fact is, holding brokers, insurance agents and other would-be financial planners, who are generally compensated by commission, to the standard of care of ERISA plan fiduciaries merely closes a gaping hole in retirement income security that rapidly developed after the enactment of ERISA as the establishment of 401(k) plans steadily grew to become the most common form of employer sponsored retirement plans in this country.

For these reasons, the UA strongly opposes any delay to EBSA's carefully-conceived Investment Advice Rule and the BIC Exemption.

Sincerely,

Mark McManus  
General President

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