



# AFL-CIO

AMERICA'S UNIONS

**American Federation  
of Labor and  
Congress of Industrial  
Organizations**

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September 15, 2017

Submitted electronically to [EBSA.FiduciaryRuleExamination@dol.gov](mailto:EBSA.FiduciaryRuleExamination@dol.gov)

Office of Exemption Determinations  
Employee Benefits Security Administration  
Attention: D-11712, 11713, 11850  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Suite 400  
Washington, DC 20210

Re: RIN 1210-AB82

Notice of proposed amendments to PTE 2016-01, PTE 2016-002, and PTE 84-24.  
Ladies and Gentlemen:

Ladies and Gentlemen,

The American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") is a voluntary, democratic federation of 55 national and international labor unions that collectively represent 12.5 million working people. We submit these comments in opposition to the Employee Benefits Security Administration's notice of proposed amendments to PTE 2016-01, PTE 2016-02 and PTE 84-24.<sup>1</sup>

Union members have an enormous stake in the private-sector pension and retirement savings system. Over 80% of private-sector union workers participate in collectively bargained workplace retirement plans, which for two-in-three include traditional pension plans.<sup>2</sup> Nearly half of all workers, union and non-union, participate in defined contribution plans.<sup>3</sup> When they leave a job, workers across the board transfer significant amounts of savings from their defined benefit

<sup>1</sup> The Notice was published in the Federal Register on August 31, 2017 (82 Fed. Reg.41365), and is available at <https://www.gpo.gov/fdsys/pkg/FR-2017-08-31/pdf/2017-18520.pdf>.

<sup>2</sup> U.S. Dept. of Labor, U.S. Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2016, Bulletin 2785* (July 2016) t. 2 (private industry workers), available at <https://www.bls.gov/ncs/ebs/benefits/2016/ownership/private/table02a.pdf>.

<sup>3</sup> Ibid.

and defined contribution plans into Individual Retirement Accounts (“IRAs”), frequently looking to professionals for investment advice.<sup>4</sup>

Figuring out which investment adviser to trust, however, has been a real barrier to getting advice, and trusting the wrong person has caused measurable harm to millions of people. That is why the AFL-CIO is a strong supporter of the Department of Labor’s (“DoL’s” or “Department’s”) long-overdue investment advice reforms, which close the regulatory loopholes that allow some investment professionals to put their own financial interests ahead of their clients’ best interest when advising on retirement accounts. As an accommodation to industry, the Department delayed the Rule’s applicability date a full year and provided for an even longer phased implementation of a new prohibited transaction exemption, the Best Interest Contract Exemption (“BICE”).

To the detriment of retirement savers, this administration, however, has focused its efforts on further delaying, if not derailing, the Rule and related prohibited transaction exemptions. The February 3, 2017, Presidential Memorandum directing DoL to update its 2015 economic and legal analysis limited the scope of the Department’s inquiry to the Rule’s “likely” harmful impact—notably avoiding any mention of the Rule’s likely benefits for retirement investors. Further, concurrent with the release of the memorandum and before the Department had begun its review, senior administration officials signaled their intent to undo the rule regardless of the facts, making conclusory statements like, “We think it is a bad rule,”<sup>5</sup> and “The rule is a solution in search of a problem.”<sup>6</sup> Subsequently, based on the assertions of financial services companies and their lobbying groups and contrary to the views of advocates for working people and retirees, the Department delayed the Rule’s applicability date by 60 days and the applicability date of its key enforcement measure contained in the BICE, as well as related prohibited transaction exemptions, even further.

Now, DoL is considering delaying implementation of the full retirement investor protections in the BICE and related PTEs by an additional 18 months. The Economic Policy Institute estimates that this proposal will cost retirement savers between \$5.5 billion and \$16.3 billion over thirty

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<sup>4</sup> According to the Department’s own 2015 Regulatory Impact Analysis (“RIA”), 54.5 percent of IRA investors with rollovers consulted a professional financial adviser as their primary source of information; sixty percent consulted a professional adviser in some capacity regarding a rollover decision. The AFL-CIO has seen entire groups of union members targeted by financial advisers who encouraged them to take lump sum distributions from their pension plans so that the adviser could manage the money without any apparent regard as to what was in each worker’s best interest.

<sup>5</sup> Statement by Gary Cohn, National Economic Advisor. Matthew J. Belvedere, “A rule to protect retirement accounts was ‘completely misintended,’ Trump advisor Gary Cohn says,” *MSNBC* (Feb. 3, 2017), *available at* <https://www.cnbc.com/2017/02/03/retirement-rule-to-protect-accounts-was-misintended-says-gary-cohn.html>.

<sup>6</sup> Statement by Sean Spicer, White House Press Secretary. Press Briefing by Press Secretary Sean Spicer, 2/3/2017, #8, *available at* <https://www.whitehouse.gov/the-press-office/2017/02/03/press-briefing-press-secretary-sean-spicer-232017-8>.

years—on top of the estimated \$2.0 billion to \$5.9 billion losses resulting from the Department’s previous delay.<sup>7</sup>

Given the evidence, we see this proposed delay for what it is: an effort to allow the financial services industry to pay mere lip service to the Rule’s best interest standard. By further delaying full implementation, the Department will ensure that IRA investors’ ability to enforce that standard will remain out of reach and excuse Wall Street firms from having to implement policies and procedures that mitigate the financial conflicts of interest that corrupt retirement advice. Working people deserve better than this. The Department should implement the full BICE and related PTEs as scheduled.

We appreciate the opportunity to submit these comments.

Very truly yours,

/s/ Shaun C. O’Brien

Shaun C. O’Brien  
Assistant Policy Director for Health and Retirement

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<sup>7</sup> See Economic Policy Institute, “Methodology for estimating losses to retirement investors of partial implementation of fiduciary rule” (September 11, 2017), available at <http://www.epi.org/publication/methodology-for-estimating-losses-to-retirement-investors-of-partial-implementation-of-fiduciary-rule-2/>.