



**INTERNATIONAL  
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July 21, 2015

Office of Regulations and Interpretations  
Office of Exemption Determinations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue NW, Suite 400  
Washington, DC 20210

**Re: Conflict of Interest Rule, RIN: 1210-AB32; Proposed Best Interest  
Contract Exemption, ZRIN: 1210-ZA25**

To Whom It May Concern:

On behalf of the approximately 750,000 active members and retirees of the International Brotherhood of Electrical Workers (IBEW), I write in support of the Department of Labor's (DOL) recently proposed rule: Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice. While most IBEW members have defined benefit plans<sup>1</sup>, many members also have retirement investments in 401(k) Plans or Individual Retirement Accounts (IRAs) and will be positively impacted by the proposed regulation. The IBEW supports the DOL's proposal because it will provide greater investment protection for its members and plan administrators.

Over the last 40 years the financial services and retirement planning industry has changed considerably. A shift from defined benefit plans to defined contribution plans began in the 1980s. A recent report by the DOL outlined this change:

"In 1978, when legislation was enacted authorizing 401(k) type plans that allow employees to contribute to their own retirement plans on a pre-tax basis, participants contributed 29 percent of contributions to [defined contribution] plans...In the years following 1978, employee contributions to [defined contribution] plans steadily rose to a peak of approximately 60 percent in 1999, where it has remained."<sup>2</sup>

Despite these dramatic changes, the regulatory definition of fiduciary investment advice has not been updated.

Professionals are currently using titles such as financial adviser or financial consultant while offering services they call financial planning or retirement

<sup>1</sup> IBEW member pensions vary by industry and employer.

<sup>2</sup> <http://www.dol.gov/ebsa/pdf/2011pensionplanbulletin.pdf>



**INTERNATIONAL  
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July 21, 2015

Page 2

planning. These professionals are regulated as salespersons and are not required to act in the best interest of their clients. Therefore, professionals holding themselves out as financial advisers or consultants can make decisions in their self-interest at their clients' expense. In other words, it is permissible for professional salespersons masked as financial advisers to give advice that will not benefit their clients but benefit themselves through commission or other sale-based incentives. The DOL's proposed regulation is a positive step toward closing many of the loopholes that allow for this conflicted behavior.

Nearly nine out of ten American households engage in some sort of financial planning.<sup>3</sup> The majority of 401(k) or IRA participants are very dependent on these investments for their retirement. The growing prevalence of 401(k) and IRA investments coupled with a 2012 study of financial literacy among investors makes a clear case for more protective investment regulations. According to the study, many investors are relying on financial advisers because they "do not understand the most elementary financial concepts, such as compound interest and inflation."<sup>4</sup> These individuals believe that the advice they are being given is in their best interest.<sup>5</sup> Unfortunately, most clients are unaware of their adviser's compensation structure and the advice they are receiving is not always in their best interest.

The IBEW applauds the DOL for this long overdue update to the 1975 regulatory definition of fiduciary investment advice. The current regulatory definition of investment advice under the Employee Retirement Income Security Act (ERISA) requires that each prong of a five part test be met before a fiduciary standard is imposed. The DOL's current proposal would replace the five part test with a straightforward definition that parallels the definition of investment advice under securities laws. There are several key components of the proposal that the IBEW strongly supports. First, an individual would render investment advice and trigger fiduciary duty when he or she is compensated for providing an individualized recommendation to a plan participant, an IRA owner, a retirement plan, or an IRA. Under the proposed rule, advice would not have to be provided on a "regular basis" before fiduciary protections would be triggered. Second, there will no longer have to be a "mutual agreement" that the advice given forms the

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<sup>3</sup> Consumer Federation of America, *Financial Planning Profiles of American Households*, Sept. 2013. Available at: <http://www.cfp.net/docs/public-policy/2013-fin-planning-profiles-of-american-households.pdf?sfvrsn=2>

<sup>4</sup> Staff of the Office of Investor Education and Advocacy of the U.S. Securities and Exchange Commission, *Study Regarding Financial Literacy Among Investors, As Required by Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act*, Aug. 2012, at vii-viii.

<sup>5</sup> See generally Angela A. Hung, et. al., *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers*, Jan. 2008.



**INTERNATIONAL  
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July 21, 2015  
Page 3

“primary basis” for the investment decision being made. Finally, rollover recommendations would now trigger fiduciary responsibility so that the best interest of the client would be the focus of the recommendation made. These are all important, overdue updates for those saving for retirement.

The proposed rule will protect the millions of Americans who are presently relying on what they believe to be investment advice directly related to their retirement security. For the reasons explained above, it is extremely important to hold those giving advice to the same ERISA fiduciary standard as registered investment advisers. It is time that regulations reflect the marketplace and investor needs. The DOL’s proposal does just that. The IBEW commends the DOL for its careful balance of consumer protection and industry preservation.

Sincerely yours,

Lonnie Stephenson  
International President

LRS:mlm