



July 6, 2017

Office of Exemption Determinations  
Employee Benefit Security Administration  
Attention: D-11933  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Suite 400  
Washington DC 20210

RE: Comments regarding the Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions; RIN 1210-AB82; Docket ID: EBSA-2017-0004 ([82 Fed. Reg. 31278](#))

The National Federation of Independent Business (NFIB) submits these comments for the record to the Employee Benefit Security Administration (EBSA) regarding the Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (RFI) published in the July 6, 2017, edition of the *Federal Register*.

NFIB is the nation's leading small business advocacy association, representing small and independent businesses in Washington, DC, and all 50 state capitals. A nonprofit, nonpartisan organization founded in 1943, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. The membership of NFIB includes small and independent businesses directly impacted by the Fiduciary Rule.

EBSA published a final Fiduciary Rule on April 8, 2016.<sup>1</sup> The final rule established an applicability date for the definition of fiduciary and prohibited transaction exemptions of April 10, 2017. On April 7, 2017, EBSA published a subsequent final rule delaying the applicability date for certain parts of the 2016 final rule, including the definition of fiduciary, until June 9, 2017.<sup>2</sup> In the same notice, EBSA delayed the applicability date for the prohibited transactions exemptions, including the Best Interest Contract exemption, until January 1, 2018.

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<sup>1</sup> [81 Fed. Reg. 20946](#).

<sup>2</sup> [82 Fed. Reg. 16902](#).

The RFI seeks comments on two aspects of the Fiduciary Rule. The first aspect is regarding “the advisability of extending the January 1, 2018, applicability date of certain provisions in the Best Interest Contract Exemption, the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs, and Prohibited Transaction Exemption.” The second aspect is regarding “public input that could form the basis of new exemptions or changes/ revisions to the rule and [prohibited transactions exemptions].”

These comments address the first aspect regarding the advisability of a further delay. NFIB plans to submit comments regarding the second aspect with recommendations to improve parts of the Fiduciary Rule at a later date.

EBSA should extend the applicability date for the parts of the rule scheduled to go into effect on January 1, 2018, until at least January 1, 2019. A delay of at least a year will give EBSA sufficient time to consider public input that could form the basis of substantive changes to the rule. EBSA should avoid a short-term delay that might require additional delay, or delays, to prevent these parts of the rule from becoming applicable before EBSA concludes its consideration of substantive changes.

For small and independent businesses that the Fiduciary Rule directly covers, or that offer or would like to offer retirement benefits to employees, extending the applicability date until at least January 1, 2019, will, if EBSA timely makes any substantive changes to the Fiduciary Rule, allow at least some time for them to plan for compliance with such changes.

NFIB recommends EBSA delay the applicability date further to at least January 1, 2019. NFIB appreciates the opportunity to comment on the Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Bosch", written in a cursive style.

Daniel Bosch  
Senior Manager, Regulatory Policy