Plumbers & Steamfitters Local 486
Severance & Annuity / 401k Fund

Board of Trustees Meeting

September 29, 2016

PLUMBERS & STEAMFITTERS LOCAL 486
SEVERANCE & ANNUITY/401k FUND

AGENDA

SEPTEMBER 29, 2016

A. ROLL CALL

B. READING OF THE MINUTES - August 25, 2016

C. ADMINISTRATION REPORTS
1. Fund Balance Report - August 31, 2016
2. Fund Schedules - August 31, 2016
3. Fund Bills To Be Approved & Paid - September 29, 2016
4. Administrative Cash Balance - August 31, 2016

D. UNFINISHED BUSINESS
1. Delinquent Contractors
2. MassMutual
3. Summary Plan Description
4. Educational Conferences
5. Segal Rogerscasey
6. Annuity Alumni Agreement

E. NEW BUSINESS
1. Deaths: Betty Woodall – 6/16/2016, age 67
   Justin Smith – 6/30/2016, age 30
   Floyd Ashburn – 8/13/2016, age 84
   Carroll Warner – 8/24/2016, age 84
2. Terminated Benefits: See attached list
3. Retirement Benefits: See attached
4. Reciprocal Benefits: See attached
5. EPS Retiree Distributions: See attached list
6. Annuity Loans: Kenneth Richie –Foreclosure - $9,227.09
7. 401k Hardship Withdrawals: James Cassidy – Foreclosure - $16,090.71
   Augustus Coleman - Residence Purchase - $2,794.47
8. Annual Audit – December 31,2015
9. DOL Fiduciary Interpretation
10. Questions
11. Date of Next Meetings – Oct. 27, 2016 & Dec.15, 2016

Plumbers & Steamfitters Local 486
Severance & Annuity/401k Fund
911 Ridgebrook Road
Sparks, Maryland 21152-9451
Toll Free Telephone (888) 494-4443
www.associated-admin.com

Trustees Attending: J. Domiano, A. Gannon, III, T. Herbert, L. Schuler, S. Shagoury, W. Welsh, J. Wontrop

Others Attending: K. Bradley, D. Jensen, D. Troll
MassMutual: Doug Ragusa
Segal Rogerscasey: Craig Chaikin

The Trustees met on August 25, 2016 at the office of the Administrative Manager.

Chairman L. Schuler called the regular meeting to order at 10:30 a.m.

A. The Minutes of the meeting of July 28, 2016 were approved as presented.

B. The Fund Cash Balance and Schedules, Fund Bills to Be Approved and Paid, and the Administrative Cash Balance were accepted. Trustees receiving compensation recused themselves from the votes relating to their payments.

C. Unfinished Business

1. Ms. Bradley reported on the current delinquencies, including LPC, South Mountain and Stone Services.

2. Mr. Ragusa distributed the MassMutual Strategic Plan Review and proceeded to cover the executive summary and reviewed the activity for the period April 1– June 30, 2016 versus January 1– March 31, 2016. The total Plan assets stood at $201,350,534 as of June 30, 2016 and $198,736,069 as of the end of March 31, 2016.

3. Ms. Bradley reported that Ms. Goodstein (Segal) emailed a red lined copy of the updated Summary Plan Description to her and Mr. Troll for review, and that review by administrative staff was ongoing.

4. Mr. Troll reported that a check was issued to MassMutual to repay the Plan Expense Reimbursement Agreement (PERA) overpayment for 2015.

D. New Business

1. Deaths: Martha Spence – 5/13/2016, age 89
   Madlyn Gourley – 7/16/2016, age 91
   Frank Engler – 7/25/2016, age 72
   Kenneth Johnson – 7/30/2016, age 77
   Foster Wright – 8/10/2016, age 88

2. The Trustees approved the attached Terminated Benefits.

3. The Trustees approved the attached Retirement Benefits.

4. The Trustees approved the attached Reciprocal Benefits.

5. The trustees approved the attached EPS Distribution Benefits.

6. The Trustees approved the following Loans:
   Michael Barksdale – Foreclosure - $6,701.21
   Kenneth Hammond Jr. – Education - $11,649.50

7. The Trustees approved the following Hardship Withdrawal:
   Guido Palermo – Eviction - $11,925.93

8. Craig Chaikin from Segal Rogers Casey (SRC) distributed and reviewed with the Trustees, the Segal Analysis of Investment Performance Summary for the Period ended June 30, 2016. Mr. Chaikin discussed with the Trustees a potential wrap fee structure for payment of investment fees to MassMutual, as an alternative to the current structure. The Trustees requested more information regarding alternative fee arrangements. Mr. Chaikin also informed the Trustees of an investment summit scheduled by SRC. Trustees have previously attended SRC's investment conferences, and were instructed to contact Mr. Troll if they wanted to attend this conference.

9. Dates of the Next Meetings:
    September 29, 2016
    October 27, 2016
    December 15, 2016

Adjournment: 1:30 p.m.

Respectfully submitted,

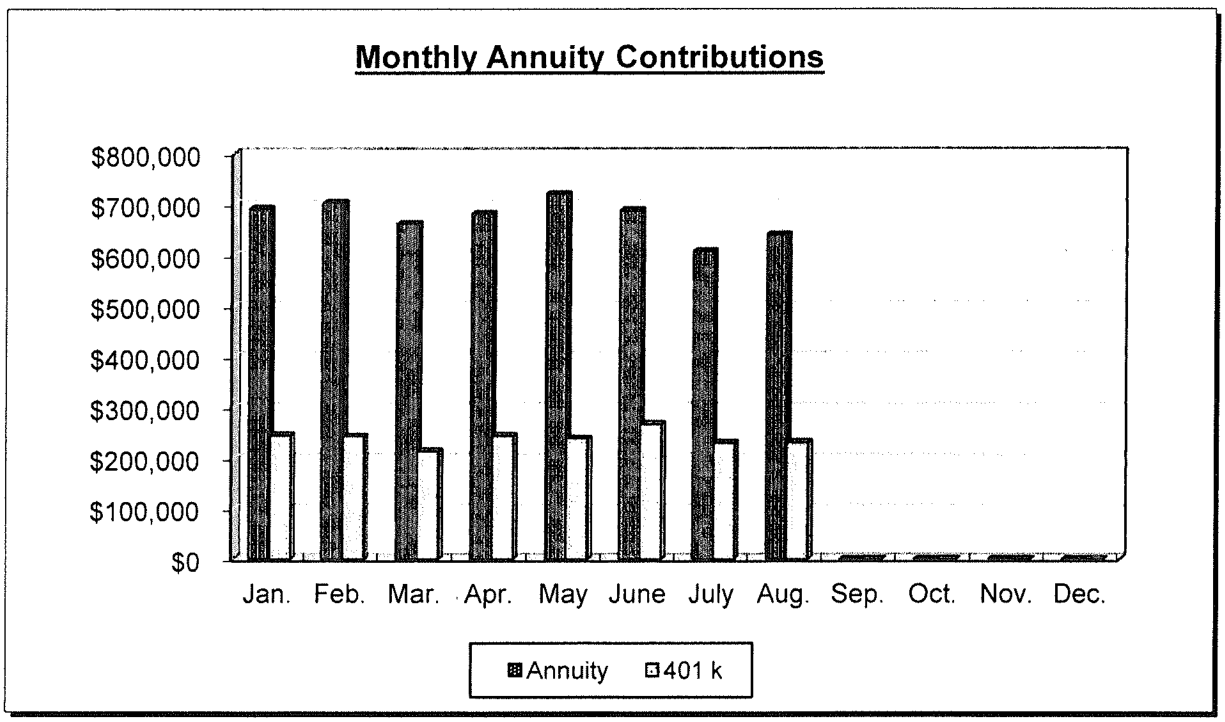
Dale O. Troll, CEBS
Secretary for the Meeting

PLUMBERS & STEAMFITTERS LOCAL UNION
486 SEVERANCE & ANNUITY/401k FUND
CASH BALANCE REPORT
FOR THE EIGHT MONTHS ENDED AUGUST 31, 2016

Receipts:	Curr. Month		Year To Date
Employer Contributions	$640,529.29		$5,359,842.70
401k Contributions	231,208.97		1,915,087.29
Less Reciprocals	(338.00)		(13,951.80)
Rollovers	0.00		32,980.96
Investment Income - MassMutual	70,838.27		10,162,730.02
Interest Income - Annuity Loans	319.37		2,502.42
MassMutual Fee Credit	27,745.69		181,563.33
Litigation Settlement	0.00		0.00
Interest & Liquidated Damages Revenue	0.00		0.00
	$970,303.59		$17,640,754.92
Disbursements:			
Benefit Payments	$648,938.38		$4,215,899.59
Loan Fees	170.00		903.60
Investment Consulting	3,000.00		24,000.00
Administration	8,833.60		72,291.48
Audit Fee	2,000.00		17,383.85
Conference Expenses	3,842.90		17,463.85
Dues	0.00		875.00
Fiduciary Liability Insurance	0.00		23,717.06
Fidelity Bond	0.00		0.00
Investment Fee	0.00		0.00
Investment Performance Expense	0.00		0.00
I R S Filing Fee	0.00		0.00
Legal Fees & Expenses	0.00		15,817.64
Meeting Expenses	0.00		0.00
Office Expenses	246.84		2,098.91
Postage	0.00		0.00
Printing	0.00		0.00
Programming	0.00		0.00
SPD Publishing	0.00		0.00
U.A. Reciprocal Program	237.50		712.50
Vendor Search Fees	0.00		0.00
Wire Fees	30.00		300.00
Trustee Fees - Bud Schuler	456.08		3,152.60
Total Disbursements	$667,755.30		$4,394,616.08
Increase (Decrease) In Fund Balance	$302,548.29		$13,246,138.84
Balance - December 31, 2015			$196,210,580.36
Balance - August 31, 2016			$209,456,719.20
<u>FUND BALANCE CONSISTING OF:</u>			
Bank of America Checking		0.06%	$132,665.87
MassMutual Investments		99.88%	209,209,351.77
Annuity Loans Receivable		0.06%	114,701.56
		100.00%	$209,456,719.20

PLUMBERS & STEAMFITTERS LOCAL UNION
486 SEVERANCE & ANNUITY/401k FUND
SCHEDULES
FOR THE EIGHT MONTHS ENDED AUGUST 31, 2016

Contributions:	Month	Year To Date
Nov. 2015 & Prior Hours	$0.00	$99,268.63
Dec. 2015 Hours	0.00	930,130.82
Jan. 2016 Hours	0.00	887,229.41
Feb. 2016 Hours	0.00	891,799.43
Mar. 2016 Hours	0.00	1,036,313.55
Apr. 2016 Hours	822.75	951,368.11
May 2016 Hours	15,639.64	864,729.89
June 2016 Hours	56,756.76	848,552.00
July 2016 Hours	798,519.11	798,519.11
	$871,738.26	$7,307,910.95



PLUMBERS & STEAMFITTERS LOCAL UNION 486
SEVERANCE & ANNUITY/401k FUND
BILLS AND DISBURSEMENTS TO BE APPROVED AND PAID
September 29, 2016

1.	Plumbers & Steamfitters Joint Funds	
	Administration @ 20% Plus Direct Costs - August 2016	$9,562.26
2.	Trustees Checks	
	L. Schuler @ $456.08 - Trustees Meeting - Septembwer 29, 2016	456.08
3.	Associated Administrators, LLC	
	Lunch - September 29, 2016	Blank
	Refreshments - September 29, 2016	11.29
4.	Reciprocal Transfers	
	Plumbers & Pipefitters Local 489 Annuity Fund - August 2016 Hours	Blank
	Steamfitters & Pipefitters Local 602 Annuity Fund - August 2016 Hours	Blank
5.	Segal Rogerscasey	
	Investment Consulting - August 2016	3,000.00
6.	Weyrich, Cronin & Sorra, LLC	
	Progress Billing Services rendered related to Annuity Audit - Dec. 31, 2015	3,800.00
7.	Conference Expenses	
	J. Domiano - Air Fare - Scottsdale AZ - October 2016	373.96
	J. Wontrop - Air Fare I/F Conf.- November 2016	361.20
8.	MassMutual	
	Administrative Services Expenses - June 2016	42.24

Accounting for August 2016 Checks

Associated Administrators, LLC	
Lunch - July 28, 2016	246.84
Refreshments - July 28, 2016	None
Reciprocal Transfers	
Plumbers & Pipefitters Local 010 Annuity Fund - June 2016 Hours	None
Plumbers & Pipefitters Local 489 Annuity Fund - June 2016 Hours	None
Steamfitters & Pipefitters Local 602 Annuity Fund - June 2016 Hours	338.00

PLUMBERS & STEAMFITTERS LOCAL 486
M.C.A. of MD JOINT ADMINISTRATION
ADMINISTRATION CASH REPORT
FOR THE EIGHT MONTHS ENDED AUGUST 31, 2016

		YTD Budget	Current Month	Year To Date	
Balance - January 1, 2016					$24,595.96
Receipts:					
Medical Fund	- 54%	$193,659	22,235.39	$180,217.20	
Pension Fund	- 19%	78,561	9,225.25	74,617.11	
Annuity Fund	- 20%	75,491	8,833.60	72,003.37	
Credit Union	- 1%	3,597	441.68	3,558.14	
Training Fund	- 4%	14,387	1,766.72	14,232.55	
Dues Fund	- 1%	3,597	441.68	3,558.14	
Industry Fund	- 1%	3,597	441.68	3,558.12	
		$372,889	$43,386		351,744.63
					$376,340.59
Expenses:					
Administration		$347,088	43,386.00	$347,088.00	
Audit		2,467	500.00	3,350.00	
Meeting Expenses		0	0.00	0.00	
Office		0	0.00	0.00	
Printing		2,067	0.00	469.37	
Postage		1,000	13.30	1,542.53	
Postage - Medical		8,800	456.42	4,666.83	
Rent		0	0.00	0.00	
Bank Service Charges		800	0.00	545.68	
Record Destruction		0	0.00	0.00	
Employer Audits		10,667	1,878.00	2,919.00	
Total Expenses		$372,889	$46,233.72	$360,581.41	
Interest Income		0	0.00	0.00	
Net Expenses		$372,889	$46,233.72		360,581.41
Balance - August 31, 2016					$15,759.18

UNAUDITED FINANCIAL REPORT

Plumbers & Steamfitters # 486 **Account: 51580**

Statement Period: 8/1/2016 - 8/31/2016

Date Prepared: 9/2/2016

51580-1 Plumbers and Steamfitters Local 486 Severance & Annuity/401(k) Plan

Source	Beginning Balance	Contribs.	Loan Activity	Forf. Alloc.	Trnsfrs	Wdrwls	Forf. Wdrwls	Expenses	Other Activity	Invest Income	Ending Balance
Employer	$41,131,748.94	$0.00	($6,815.06)	$0.00	$0.00	($342,095.72)	$0.00	($70.00)	$0.00	$1,004.22	$40,783,772.38
Rollover	$1,285,596.71	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$1,668.02	$1,287,264.73
Deferred Salary	$59,275,348.68	$230,605.61	$0.00	$0.00	$0.00	($13,641.70)	$0.00	($100.00)	$0.00	$33,717.00	$59,525,929.59
Restored Withdrawal	$2,392.46	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$10.56	$2,403.02
EPS	$105,643,563.41	$606,892.13	$25,322.25	$0.00	$0.00	($286,972.93)	$0.00	$0.00	$0.00	$34,973.31	$106,023,778.17
Money Purchase Pension	$724,725.37	$0.00	$0.00	$0.00	$0.00	($6,228.03)	$0.00	$0.00	$0.00	($534.84)	$717,962.50
Grand Total	$208,063,375.57	$837,497.74	$18,507.19	$0.00	$0.00	($648,938.38)	$0.00	($170.00)	$0.00	$70,838.27	$208,341,110.39

Statement Period: 8/1/2016 - 8/31/2016

Date Prepared: 9/2/2016

PLUMBERS & STEAMFITTERS LOCAL UNION
486 SEVERANCE & ANNUITY/401k FUND
DELINQUENT CONTRACTORS
AS OF AUGUST 31, 2016

Delinquent Contractors:		**Work Month**	**Amount**	**Date Received**
1.	Capitol Refrigeration Inc	Jul-16	$2,427.20	9/19/2016
2.	CBI Services LLC	Jun-16		
	CBI Services LLC	Jul-16		
3.	Excel Mechanical Contractors	Jul-16	$3,832.09	9/6/2016
4.	James P. Kruger & Assoc	Jul-16		
5.	M&E Sales, Inc.	Nov-15		Agreement
6.	South Mountain Mechanical	May-16	$2,828.23	9/6/2016
	South Mountain Mechanical	Jun-16		
	South Mountain Mechanical	Jul-16		
7.	Statewide Mechanical	Jul-16		
8.	Stone Services, Inc.	May-15		Agreement
	Stone Services, Inc.	May-16		
	Stone Services, Inc.	Jun-16		
	Stone Services, Inc.	Jul-16		
9.	Triad Mechanical Services	Jul-16	$3,011.97	9/6/2016

Plumbers & Steamfitters Local 486
Severance & Annuity/401(k) Fund

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ANNUITY BENEFITS TO BE APPROVED SEPTEMBER 29, 2016

TERMINATED BENEFITS

xxx-xx-2075	CHRISTOPHER THOMAS	LUMP SUM	$ 4,079.26
xxx-xx-3726	WALTER SCOWDEN	ROLLOVER	$ 14,722.51
xxx-xx-8609	ROBERT WHITE, JR	LUMP SUM/MONTHLY PAYMENTS	$187,374.53

RETIRED BENEFITS

xxx-xx-1621	LINDA METZ	ROLLOVER	$350,976.65
xxx-xx-7448	WILLIAM PUNTE, SR	ROLLOVER	$588,132.03
xxx-xx-3863	BARRY LEE STAHL	ROLLOVER/MONTHLY PAYMENTS	$258,270.40

RECIPROCAL WITHDRAWAL

xxx-xx-0458	JOHN FITGERALD	LUMP SUM	$ 2,981.21

EPS DISTRIBUTION – RETIRED

xxx-xx-9011	ANDREW CALLHAN, III	LUMP SUM	$ 55,450.00
xxx-xx-7157	CATHERINE SCHMIDT	LUMP SUM	$ 15,000.00

APPLICATION FOR ANNUITY LOAN

Plumber & Steamfitters Local 486 Severance and Annuity/401k Fund

911 Ridgebrook Rd.
Sparks, MD 21152
(888)-494-4443

1. Name Ritchie JR Kenneth Wayne Date of Birth: 02/04/1977
   Last First Middle

2. Address 3524 Miller Rd. Street MD 21154
   Number Street City State Zip Code

   Phone: 443-421-0004 S.S: Amount To Borrow: 9,227.09

3. **Purpose of Loan (Check One)**

[ ] A. Out-of-pocket expense for sickness or injury for yourself and/or your dependents of at least $500.00 which was not reimbursed by benefits payable from the Plumbers & Steamfitters Local 486 Medical Fund or total disability beyond the 26 week maximum accident and sickness benefits. **(Attach proof of expense such as doctors' bills, hospital bills, etc.)**

[ ] B. Funeral expenses on the death of your spouse, child, parent, sibling or any person dependent upon you for support. **(Attach copies of bills and copy of death certificate.)**

[ ] C. Education expenses for yourself, your spouse or your dependent child at an accredited education or vocational school or institution or to maintain your dependent child at a school for physically or mentally handicapped children; check appropriate boxes. **(Attach copies of the bills from the school, college, etc.)**

[ ] tuition [ ] room and board

Name and address of educational institution:

____

____

____

Full Name of Student ________________ Age__________

Relationship to employee______________________________

[X] D. Eviction & foreclosure expenses - amount necessary to prevent the eviction from the participant's principal residence or foreclosure on the mortgage of that residence. **(EVICTION: Attach court proof of the eviction or letter from Landlord signed and notarized. Also submit copy of the lease agreement). FORECLOSURE: Attach foreclosure proof from Mortgage Company or submit court documents).**

[ ] E. Quarterly Medical Fund Self-Payment

APPLICATION FOR HARDSHIP WITHDRAWAL

Plumber & Steamfitters Local 486 Severance and Annuity/401k Plan

911 Ridgebrook Road
Sparks, Maryland 21152-9451
888-494-4443

1. **Name** James Patrick Cassidy III
First Middle Last **Soc. Sec. No.**

2. **Address** 1911 Crouse Rd Forest Hill Md 21050
Number Street City State Zip Code

Telephone Number 410 961 5361 **Date of Birth:** 8-16-1978

Amount of Withdrawal $ 16,090.71
(**Please note: Hardship Withdrawal Checks are made payable the establishment to whom the monies are owed and not to the Participant.)**

3. **Purpose of Hardship Withdrawal** (Check One)

[ ] A. Out-of-pocket expense for medical care (not covered by other insurance) incurred by you, a spouse, a dependent child or a parent you claim as a dependent on your federal tax return. Expenses must be at least $500.00 which was not reimbursed by benefits payable from the Plumbers & Steamfitters Local 486 Medical Fund or total disability beyond the 26 week maximum accident and sickness benefits. **(Attach proof of expense such as doctors' bills, hospital bills, etc.)**

[ ] B. Quarterly Medical Fund Self Payment

[ ] C. Cost directly related to the purchase of your principal residence **(Attach copies of documents supporting the Purchase)**

[ ] D. Expenses incurred in connection with the payment of tuition and/or room and board at an accredited educational institution **(Attach copy of invoices)**

[X] E. Eviction & Foreclosure expenses - amount necessary to prevent the eviction from the participant's principal residence or foreclosure on the mortgage of that residence. **(Attach Court proof of Eviction or Foreclosure. ** If no court papers for Eviction, a letter from Landlord stating Eviction process with copy of your Lease.** Foreclosure - Notice from Mortgage Company Must be submitted.)**

[ ] F. Funeral expenses incurred due to the death of your spouse, child, parent or dependent, **(Attach a copy of the death certificate)**

[ ] G. Expenses for repair of damage of your principal residence that would qualify for a casualty deduction under IRC Section 165

8-26-2016 X James P. Cassidy III
(Date) (Employee's Signature)

AUG 26 2016
AA LLC

APPLICATION FOR HARDSHIP WITHDRAWAL

Plumber & Steamfitters Local 486 Severance and Annuity/401k Plan

911 Ridgebrook Road
Sparks, Maryland 21152-9451
888-494-4443

1. **Name** Augustus Coleman
First Middle Last **Soc. Sec. No.**

2. **Address** 6917 Donachie Rd #D Baltimore, MD 21239
Number Street City State Zip Code

Telephone Number 4108084714 **Date of Birth:** 4/9/72

Amount of Withdrawal $ 2794.47

(**Please note:** **Hardship Withdrawal Checks are made payable the establishment to whom the monies are owed and not to the Participant.)**

3. **Purpose of Hardship Withdrawal** (Check One)

[ ] A. Outofpocket expense for medical care (not covered by other insurance) incurred by you , a spouse, a dependent child or a parent you claim as a dependent on your federal tax return. Expenses must be at least $500.00 which was not reimbursed by benefits payable from the Plumbers & Steamfitters Local 486 Medical Fund or total disability beyond the 26 week maximum accident and sickness benefits. **(Attach proof of expense such as doctors' bills, hospital bills, etc.)**

[ ] B. Quarterly Medical Fund Self Payment

[✓] C. Cost directly related to the purchase of your principal residence **(Attach copies of documents supporting the Purchase)**

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[ ] F. Funeral expenses incurred due to the death of your spouse, child, parent or dependent, **(Attach a copy of the death certificate)**

[ ] G. Expenses for repair of damage of your principal residence that would qualify for a casualty deduction under IRC Section 165

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Bernard W. Rubenstein
(1920 - 2009)
Anthony A. Abato, Jr.
(1933 – 2015)

Of Counsel
H. Victoria Hedian
Stephen W. Godoff •

To: Boards of Trustees, Plumbers and Steamfitters Local 486 Funds
Date: September 28, 2016
From: Kim Bradley
Re: Recent Developments in DOL Fiduciary Interpretation

DOL LAWSUIT FOR BREACH OF FIDUCIARY DUTY

This year, an investigation by the U.S. Labor Department's EBSA found that International Association of Machinists National Pension Fund and its Trustees violated ERISA and breached their fiduciary duties by:

- failing to select fund service providers loyally and prudently, including consultants and fund investment managers
- ignoring required procedures included in the fund's governing plan documents regularly
- creating conflicts of interest for the fund
- unlawfully soliciting and accepting gratuities from plan service providers
- spending and permitting others to spend fund assets lavishly on unnecessary trips, parties and extravagant food, wine and accommodations

DOL filed a lawsuit against the IAM Pension Fund and its Trustees in January of this year. A settlement agreement recently signed by the Judge ordered the defendants to repay $200,000 to the fund and pay $40,000 in civil money penalties. The order also requires the plan trustees to adopt the new manager and consultant selection policy, which mandates that the plan trustees use a three-part search process for selecting an investment consultant or investment manager, engage in a new search process for a new general investment consultant for the fund, and hire an independent search consultant to conduct a comprehensive and objective request for proposal process for this search, amend the fund's code of conduct and ethics to prohibit the same person from acting as both an investment consultant and investment manager for the fund, and amend the fund's record retention policy to hold records relating to the hiring or firing of any investment consultant or manager for six years.

This lawsuit and investigation provide insight into DOL's interpretation of trustee responsibilities and the specific issues that DOL considers important in the administration of plan duties. The allegations made by DOL provided examples of the types of behaviors and facts that DOL considers to cross the line of fiduciary duty and/or violate the rules on prohibited transactions under ERISA. In light of this lawsuit and settlement, the Trustees may want to review their selection and monitoring processes and review policies to ensure that they are in compliance with current DOL interpretation.

DOL FINAL FIDUCIARY RULE ON CONFLICT OF INTEREST

DOL issued a final fiduciary rule effective June 7, 2016, which is applicable to ERISA plans on April 10, 2017. Originally, the fiduciary rule was adopted in 1975, when the activities of investment brokers, managers and other investment professionals were significantly different from the current investment environment. The original fiduciary rule was designed to protect retirement plans forty years ago when few consumers were managing their own retirement savings, or relying on third party investment advice. The new fiduciary rule targets investment advice to ensure that it is provided in the consumer's best interest, and is intended to improve compliance and security of ERISA plan assets and benefits.

ERISA Statutory Provision

ERISA provides that "a person is a fiduciary with respect to a plan to the extent . . . he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so." 29 U.S.C. §1002(21)(A)(ii). A fiduciary, in turn, must discharge his duties prudently and in the sole interest of plan participants and beneficiaries. 29 U.S.C. § 1104. Moreover, fiduciaries must refrain from engaging in prohibited transactions (i.e., self-dealing). 29 U.S.C. §1106.

The 1975 Rule

In 1975, in order for a person to be held to ERISA's fiduciary standards with respect to providing investment advice for a fee, such person must have met the following criteria, having: (i) made recommendations as to investing in, purchasing or selling securities or other property, or given advice as to their value, (ii) on a regular basis, (iii) pursuant to a mutual understanding, (iv) that the advice would serve as a primary basis for investment decisions with respect to plan assets, and (v) would be individualized to the particular needs of the plan. This rule existed for 35 years until the DOL determined that it was insufficient to protect fiduciaries managing participant-directed accounts and IRAs. The DOL said that as a result of the five-part test, many investment professionals and advisers have no obligations to adhere to ERISA's fiduciary standards or prohibited transaction rules. Thus, as non-fiduciaries, investment professionals were able to give imprudent or disloyal advice without liability under ERISA.

The 2010 Proposed Rule

In 2010, the DOL sought to update the rules applicable to investment advisors to cover those individuals who did not have ongoing relationships with fiduciaries or plan participants, and to broaden the circumstances in which an investment advisor would be considered a fiduciary with regard to investment advice. In general, the 2010 proposed rule stated that:

A person gives fiduciary investment advice if, for a direct or indirect fee, he or she –

Provides the requisite type of advice:

- Appraisals or fairness opinions about the value of securities or other property;
- Recommendations on investing in, purchasing, holding, or selling securities; or
- Recommendations as to the management of securities or other property;

And meets one of the following conditions:

- Represents to a plan, participant or beneficiary that the individual is acting as an ERISA fiduciary;

- Is already an ERISA fiduciary to the plan by virtue of having any control over the management or disposition of plan assets, or by having discretionary authority over the administration of the plan;
- Is an investment adviser under the Investment Advisers Act of 1940; or
- Provides the advice pursuant to an agreement or understanding that the advice may be considered in connection with investment or management decisions with respect to plan assets and will be individualized to the needs of the plan.

The 2010 Proposed Rule was a significant departure from the 1975 Rule, encompassing a new large group of investment professionals who would be bound by fiduciary standards prohibiting them from profiting from the decisions made by their clients. The 2010 regulations were met with such widespread disapproval that they were ultimately withdrawn by the DOL.

The 2015 Proposed Rule

The market for individual investment advice has exploded over the last decade, with $4.8 trillion in IRA investments, $3.8 trillion in 401(k) investments, most of which are made by unsophisticated investors seeking guidance and instruction from investment professionals regarding management, allocation and transfers of their accounts. Rollovers from work-related retirement plans to IRAs are expected to total near $2.5 trillion over the next five years, and most of these transfers will be made upon advice from broker-dealers with proprietary arrangements with retail investment companies. In light of the potential for self-dealing by those broker-dealers, the DOL devoted significant time and energy restructuring the fiduciary and conflict of interest regulations under ERISA.

The 2015 Proposed Rule provided for withdrawal of the 2010 Proposed Rule. The 2015 Proposed Rule sought to subject a person to ERISA's fiduciary standards, if, for a fee or other compensation, the person:

- Provides one of four types of advice directly to a retirement plan, plan fiduciary, participant or beneficiary, IRA or IRA Holder ("Covered Advice"); and
- Either directly or indirectly (e.g., through or together with an affiliate):
- represents or acknowledges fiduciary status; or
- provides the advice under an agreement, arrangement or understanding that the advice is individualized to, or specifically directed to, the advice recipient for consideration in making investment or management decisions with respect to securities or other property.

This marked a significant expansion of the 1975 Rule, which required covered advice to be provided on a regular basis, and for the advice to be the primary basis for investment decisions. The 2015 Proposed Rule lowered the threshold for covered investment advice: permitting one-time advice that is simply an ancillary consideration in the decision-making process to be covered under the fiduciary rule.

2016 Final Rule

The 2016 Final Rule modifies certain provisions of the 2015 Proposed Rule to address comments made by practitioners seeking clarification of certain provisions. Specifically, it describes the kinds of communications that would constitute investment advice and describes the types of relationships that would cause a person to be considered a fiduciary under ERISA.

The five-part test that was enacted in 1975 has been amended, and the regulatory definition of fiduciary investment advice in 29 CFR § 2510.3-21 replaces the five-part test to better comport with the statutory language of ERISA and the Internal Revenue Code. Generally, there are three broad requirements that would cause a person to be considered a fiduciary: 1) the person must provide advice; 2) the person must receive a fee or other compensation in connection with such advice; and 3) the recommendation provided must be provided either directly or indirectly by a person who meets certain requirements.

Communications constituting covered investment advice include providing any recommendations to a plan, plan fiduciary, plan participant, plan beneficiaries, or IRA owners for a fee or compensation. It includes direct or indirect advice relating to advisability of acquiring, holding, disposing of, or exchanging securities or other investment property; how securities or other investment property should be invested after being rolled-over, transferred or distributed from an IRA; management of securities or other investment properties including recommendations on investment policies, portfolio composition, or selection of other persons to provide investment advice; and rollovers, transfers or distributions from a plan or IRA, including amounts of such transactions. The fee or compensation associated with the recommendation can be direct or indirect including commissions, finder's fees, revenue sharing, shareholder servicing fees, marketing or distribution fees, recruitment compensation, or many other forms of compensation. Finally, the recommendation must be provided by a person who represents or acknowledges that he is acting as a fiduciary within the meaning of ERISA or the Code, renders advice pursuant to a written or verbal understanding that advice is based on the particular investment needs of the recipient, or directs the advice to a specific recipient regarding the advisability of a piratical investment or management decision with respect to securities or other investment property of the plan.

Under the 2016 Final Rule, the fundamental threshold in determining whether an individual is a fiduciary is whether a recommendation actually occurred. "A recommendation is a communication that, based on its content, context, and presentation, would reasonably be viewed as a suggestion that the advice recipient engage in or refrain from taking a particular course of action." (See U.S. DOL Employee Benefits Security Administration Fact Sheet, "DOL Finalizes Rule to Address Conflicts of Interest in Retirement Advice, Saving Middle-Class Families Billions of Dollars Every Year," (2016)). General communications, such as circulating newsletters, educational materials and plan information, is not enough to trigger the recommendation section of the Rule. In addition to specifically stating what constitutes fiduciary status under ERISA, the 2016 Final Rule also provides for what advice should not be considered investment advice, or fiduciary communications. This includes four broad categories of non-fiduciary, educational information including: plan information; general financial, investment and retirement information; asset allocation models; and interactive investment materials.

I hope this information is helpful to the Trustees and may further discussions with the Fund's current investment managers regarding advice that they provide. If you have any questions, or would like to discuss these issues in greater detail, do not hesitate to contact me by telephone or by email at kbradley@abato.com.