



July 21, 2015

Submitted electronically [e-ORI@dol.gov]

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Attn: Conflict of Interest Rule  
Room N-5655  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington DC, 20210

RE: Definition of the term “Fiduciary”; Conflict of Interest Rule (RIN 1210-AB32)

Ladies and Gentlemen:

BrightScope, Inc. (“BrightScope<sup>1</sup>”) appreciates this opportunity to comment on the U.S. Department of Labor’s (the “Department”) definition of a Fiduciary Proposed Rule (“Proposed Rule”)<sup>2</sup>. BrightScope is supportive of the Department’s goal to increase protection for plan sponsors, participants, beneficiaries and IRA owners. In 2009, BrightScope launched its public 401k plan ratings in an effort to improve retirement outcomes for participants by improving transparency in the ERISA defined contribution plan market. We have since evolved our business to provide information on advisors, asset managers and mutual funds. We believe that while increasing financial transparency is important, the Department’s efforts to align advisors with their clients is a critical step to protect retirement savers. We will provide specific comments on a handful of the carve-outs’ that apply to BrightScope’s business model, as well as provide feedback on some of the other comments received by the Department.

### **Platform Provider Carve-Outs and Defining Education versus Advice**

BrightScope agrees that the modifications in the carve-out are important steps in being able to provide needed information on investment selection, alternative solutions and education and that the tenant of these carve outs should extend to IRA platforms and owners.

Platform providers should be able to provide objective criteria in support of investment education and BrightScope firmly believes that general investment information and education on funds, plans and or advisors should not constitute the provision of investment advice. This type of information is crucial to an individual’s understanding of their selection of advisors, investments and alternatives. Below we would like to provide a few examples of information we

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<sup>1</sup> BrightScope Inc. is a financial information and software company that provides retirement plan ratings and analytics through which plan sponsors can benchmark and improve their plans. More information about BrightScope can be found on our website at [www.brightscope.com](http://www.brightscope.com).

<sup>2</sup> DEP’T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., Definition of Term “Fiduciary”; Conflict of Interest Rule—Retirement Investment Advice [RIN: 1210-AB32], 80 Federal Register 21928 (Apr. 20, 2015) (the “Re-Proposing Release”).

deliver on our platform that we feel would be part of this exemption in providing objective information:

- The BrightScope Plan Rating™, which is a quantitative score developed to assist individuals in determining the relative quality of a company's 401k plan, compared to a relevant peer group.
- The BrightScope Fund Scorecard, which compares key investment fund characteristics to other funds in its peer group.
- BrightScope Advisor Pages, a comprehensive list of financial advisors along with their background information sourced from SEC and FINRA public filing information and supplemented with additional information provided by the advisor.

All of these information sets are provided to the public as information resources at no cost. The information itself is geared toward helping plan fiduciaries, plan participants and IRA owners more effectively monitor their investments and support retirement decisions.

BrightScope would like to clarify that the platform provider carve-out extends beyond firms offering a platform of investment alternatives. In particular, BrightScope would suggest that the language of the carve-out explicitly cover a platform that offers investment adviser alternatives. BrightScope's newest product, BrightScope AdviceMatch, aims to educate and assist investors with finding, evaluating, and selecting the right financial advisor. The web-based software helps individual 401k participants, IRA holders or plan sponsors identify advisors who are the best fit for their needs based on information they provide and questions they answer. The starting point is the full set of registered financial advisors, but at the end of the process the investor receives a scored list of the advisors most likely to meet their defined needs. Through this process an investor may use a selection criteria that is only available if an advisor has supplemented their public data with additional information. In this case, they would be limited to only the advisors who have filled out the additional information. In the spirit of FINRA Regulatory Notice 01-23, we believe this use case in particular would not trigger fiduciary status for BrightScope AdviceMatch, but ask that the Department clarify that the definition of platform is not limited to those offering investment alternatives.

BrightScope feels that defining education versus advice, is an important carve out and we support the effort to distinguish between the two. We believe the need for investment tools, ratings, calculators or other models designed to present information to aide with investment selection decisions are important and should not have fiduciary status. The benefits of allowing for investment comparisons and analytics to evaluate fund selections, plans or advisors can contribute to supporting better investment decisions and outcomes.

### **Low Fee Plan Carve-Out**

The Department has requested specific comment on whether an exemption for low fee plans should be considered. BrightScope does not believe a low-fee exemption is realistic. Setting a mark for when a plan is low-fee removes the incentive for fees to be even lower and creates a boundary under which conflicted advice would be permitted to remain within the industry. In addition, a consistent methodology for calculation of total plan cost remains an industry challenge. Without detailed calculation instructions, any total plan cost calculation would be subject to manipulation. Many in the industry have adopted the BrightScope Total Plan Cost methodology which includes all participant-paid investment, administrative and advice-related

costs. However, others in the industry have different methodologies. There are still substantial areas of disagreement. For example, in the small plan market group annuity contracts are still very common. Some of these contracts permit investment directly into the general account of the insurance company offering the contract. In these cases, the firm credits a portion of the return earned in the general account back to the plan. This is typically called the “spread.” This spread is considered by some to be a fee, and by others it is not considered a fee. If a plan has a significant investment in stable value, it can make it seem that the plan is low fee, when in fact the crediting rate is lower than industry averages and the spread is high. The Department has exempted these quasi-fees from its fee disclosure regulations, but many fiduciaries still consider these fees in their own internal fee calculations.

We feel that a low-fee carve-out is not necessary and would add more complexity for plan sponsors to determine whether or not they qualify than it is worth.

### **Feedback on Other Comments**

We have heard it repeatedly stated that requiring advisors in the retirement market to be fiduciaries will lead to an “advice gap” for lower income and lower asset households. This argument does not hold strong. We believe that the experience in the UK through the implementation of Retail Distribution Review (RDR) provides insight into the likely impact. In that case the full removal of commissions is actually a more dramatic change than the requirement that the advisor is a fiduciary. However, in both cases we expect some advisors to leave the business, but for that to lead to more business for those that remain. In addition, we are confident that new technologies will step in to help serve underserved advice markets, for accounts as small as \$100, and at fee levels that are difficult to match. These services may even be provided by the same advisors that currently sell products.

Some commenters have expressed concern about removing choice from investors over their cost structures, service models and product offerings. We feel that the new proposal more effectively balances this need, but we must admit we remain unconvinced that the majority of investors understand the cost structure or service model they are buying. Investors assume their advisors are acting in their best interest.

### **Conclusion**

We hope you find the foregoing comments helpful in your review of the Proposed Rule. If you have further questions or need additional information please feel free to contact me at [ryan@brightscope.com](mailto:ryan@brightscope.com).

Sincerely,  
Ryan S. Alfred  
President  
BrightScope, Inc.