

To: EBSA, E-ORI - EBSA
Subject: RIN 1210-AB32
Importance: High

Employee Benefits Security Administration Via: e-ORI@dol.gov
U.S. Department of Labor Subject line: RIN 1210-AB32
200 Constitution Avenue, NW
Washington, DC 20201

Re: Comment Period of Conflict of Interest Rule and Related Exemptions

Ladies and Gentlemen:

I work within the financial services segment of the fixed insurance industry. It is clear this proposed rule affects many other industries including banking, investment advisory services, broker dealers, and employee benefit plans just to name a few. I will be commenting on the impact this rule will have on the fixed insurance industry and the consumers served by this industry.

Due to the breadth of this rule, it is difficult to comment fully on it in the time provided so I will limit my commentary to what I view as the largest issues which cause the rule to be unworkable within the fixed insurance industry and how the rule affects consumers.

How the rule affects the fixed insurance industry:

The Department of Labor (DOL) rule would dismantle, eliminate or radically alter five important areas of our industry.

First, the distribution and sales business model for fixed insurance products would no longer comply with federal rules. Agents would no longer be able to earn commissions on sales where the source of funds was qualified retirement account money. Instead, they would be forced into a “fiduciary” model requiring they charge a fee for advice rather than be compensated by the insurance company that created the product being sold.

Second, the regulatory protections afforded consumers through the oversight and conflict resolution authority available through their state department of insurance would be largely scrapped. I will comment on this further below in my section on how this rule affects consumers.

Third, the products, processes, management structure and software platforms which we currently possess in our industry will not comply, in any way, with a fee-based planning model proposed by the DOL. Our products are designed without annual advisory fees. These fees would need to be extracted from the account values within our fixed products. Our industry has no ability to subtract advisory fees from contract values. Further, doing so would have a detrimental impact on contract values which would cause the products to underperform and fall below statutory minimum guarantee requirements. In other words, the rule conflicts with minimum guaranteed

value protection existing in each state where these savings products are sold.

Fourth, the legal construct of our industry, including that of the Department of Insurance, is based on agency law and contractual obligations between the insurance company, the distribution firms, the agents and the consumers. This entire structure would be tossed out with no viable substitute available. Insurance advisors are governed under the laws of agency and investment advisors under the laws of fiduciary.

The common insurance company selling agreements clearly state the representatives are an agent of the insurance company. This contractual agreement will violate the proposed rule. New agreements for hundreds of thousands of insurance agents must be established and executed and these small business men and women in the field will have to sort out exactly how to survive with little or any guidance from the insurance companies who will no longer be in a supervisory position. This alone will carry significant expenses which will eliminate entire careers.

An agent may not alter the contract or the commitments within the policies or contracts created by the insurance company. In fact, agents are prohibited from doing so. An agent may not negotiate benefits on behalf of the client. An agent may not take an annuity on an individual's life and 'sell' it to another party in a bid market. The fiduciary rule rightfully resides in the investment community. Investment advisors and portfolio managers can negotiate price, alter the investment mix and buy and sell in a bid market. This is why they should be held to a fiduciary standard. Fixed insurance products simply do not fit within this context.

Fifth, all existing fixed annuities were never priced for advisors to subtract fees and no universal software platform exists for insurance companies to comply, report and manage these fees on behalf of advisors. Without an exemption for fixed insurance products, the DOL rule would make obsolete an entire industry of quality fixed insurance products which have some of the lowest consumer complaint levels in the entire financial services industry in America. This will eliminate competition, jobs, and consumer choice.

Without new industry-wide selling agreements, new industry-wide systems and infrastructure, new industry-wide products and industry-wide embedded fee structures, the insurance companies won't have products to bring to market. They will also lose their management and supervisory control over agents as will the Department of Insurance. The impact will be the loss of thousands of jobs and hundreds of millions of dollars.

How the rule affects consumers:

Consumers will pay more. Annuities for example, are long-term savings vehicles. It is not unusual for policy holders to remain in their annuity for up to a decade or more. Ongoing annual advisory fees will have an annual negative impact on consumer account values. Over the years, these fees will far outpace the current commission based model costing consumers millions of dollars more in advisory fees.

Consumers will lose innovative features and benefits based upon their needs. Many of our product include innovative feature which provide enhanced benefits for certain events such as

medical impairments. These values are often leveraged from the account value and based, to some degree, upon changes in life expectancy as a person becomes impaired. Annual fees extracted from the account values would be magnified when these enhance benefits are triggered. Consumers would pay a heavy price under this new model.

Consumers will lose income. Our products also offer lifetime income riders which carry separate account values. These accounts would also be affected by annual advisory fees causing the future income to be reduced.

Consumers will lose choice, a quality process and protection. “The DOL has defined the word fiduciary in such a narrow manner; they accommodate only fee-based planning models. This fails to recognize the decades-old, high-consumer satisfaction distribution model currently in existence in the insurance industry. Within the insurance industry, high duties and responsibilities already exist. In fact, they could readily be referred to as fiduciary duties. The problem is the DOL rule will place this duty in the wrong hands.

One definition of “fiduciary” describes the word as, “A person in whom another has placed the utmost trust and confidence to manage and protect property or money. The relationship wherein one person has an obligation to act for another's benefit.”

I believe there is a fiduciary duty in the insurance industry already, and it is one that can be rightfully defined. The conflict created by the DOL is how they have defined the fiduciary role and who they are applying the role to. In the fixed insurance industry, consumers are not purchasing an investment they can later sell in a bid market. They are reviewing and purchasing a legal contract between themselves and the insurance company.

Prior to going to market, exhaustive pricing is conducted by sophisticated actuaries who develop features and benefits believed to serve the needs of consumers. These contracts, once priced, are then filed with the Department of Insurance in each state for review and to assure the contract meets the standard non-forfeiture rules. This essentially assures the contracts will provide a legally required guaranteed minimum return prior to going to market. Once approved, the insurance company can market their product.

Within the contract, the insurance company clearly defines benefits, promises and commitments. The insurance company receives the policyholder funds and manages these funds along with the company's own assets. The policyholder is guaranteed to receive the benefits, promises and commitments granted within the policy. In fact, the company is now legally bound to provide these benefits, etc. The company must fulfill their obligations. In this way, the insurer is acting as a fiduciary.

The policyholder also receives a free-look period, typically 30 days, to examine the contract. During this period they may return it for a full refund. Additionally, the state Department of Insurance acts as a powerful advocate on behalf of the policyholder, and can rapidly correct a bad situation as they compel the insurance company to refund money if an inappropriate transaction takes place.

In the fiduciary model, the Department of Insurance will be unable to act on behalf of the consumer. If a fiduciary maintains they did nothing wrong in a given situation, it will need to be resolved through legal channels.

As an example, consider how the Securities and Exchange Commission handles complaints today. The SEC will not cause transactions to be reversed and investors made whole. Rather, they leave it up to the legal process which involves expensive litigation costs which small investors cannot afford to pay. To quote the SEC's own website, "...we cannot act as a judge or an arbitrator and force a broker, brokerage firm, or company to resolve your complaint."

To read more about SEC complaint resolution practices check out

<http://edgar.sec.gov/investor/pubs/howoiea.htm>

The current fixed insurance model provides greater protection to the consumer and does so at a lower cost to the consumer.

Fixed insurance products are not investments and the fiduciary standard as described by the DOL, simply fails to recognize the subtleties of an entire industry and the governance surrounding it.

Defining the fiduciary role of an insurance company might be a wise choice and the DOL may want to consider their role as I have described above. Applying this burden to agents who cannot modify or structure the contracts is not workable. Agents are already monitored and required to provide suitable recommendations for the consumers and the insurance company works on the consumer's behalf to fulfill all contractual obligations. The Department of Insurance advocates for consumers and holds insurance companies accountable to their obligations and financial duties. This explains the high satisfaction rate reported by policyholders throughout our great nation. Our industry enjoys the lowest complaint rates of any major financial services discipline.

Agents representing fixed insurance products should be granted a seller's exemption within the proposed DOL rule.

Respectfully submitted,