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September 8, 2015

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

Office of Exemption Determinations  
Employee Benefits Security Administration  
Attn: D-11712  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

**RE: RIN 1210 –AB32 – Proposed Conflicts of Interest Rule**  
**ZRIN 1210-Za25 – Proposed Class Exemption**

Ladies and Gentlemen:

Following the August 2015 hearings relating to the above-referenced Notice of Proposed Rulemaking on *Definition of Fiduciary; Conflict of Interest Rule-Retirement Investment Advice and Related Proposed Prohibited Transaction Exemptions* (the “Proposed Rule”), Milliman is taking this opportunity to provide comments and suggestions to the US Department of Labor (the “DOL”) related to the Proposed Rule’s content. As a global consulting firm, we provide a wide variety of services related to the retirement industry.

There is much evidence that Americans’ retirement security and retirement confidence<sup>1</sup> is in crisis and that updating the 1975 DOL Regulations could have a positive impact on the investing public’s ability to prudently plan and save for retirement and their ability to convert retirement savings into a lifelong income stream following retirement.

However, we respectfully disagree that expanding the definition of a fiduciary, providing carve-outs and exclusions, and creating an unnecessarily complex “Best Interest Contract Exemption” for prohibited transactions will meet this intended public policy goal.

1: [http://www.ebri.org/pdf/surveys/rcs/2015/EBRI\\_IB\\_413\\_Apr15\\_RCS-2015.pdf](http://www.ebri.org/pdf/surveys/rcs/2015/EBRI_IB_413_Apr15_RCS-2015.pdf)



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We regard conflicts of interest and fees that are not transparent as problematic in the retirement industry. The investing public, that is, millions of individual savers, should be able to access professional investment advice with a clear understanding of the products, services, and fees in advance of entering into any advisory relationship.

The national trend has already moved toward retirement plans that are directed by individuals, rather than through employers' defined benefit pension plans. Investment, longevity, inflation and liquidity risks have been transferred to individuals, making it crucial that each future retiree be able to obtain information tailored to that individual's needs. By broadening the scope of investment advice and the definition of fiduciary, we submit that the Proposed Rule would limit individuals' access to this crucial information.

Service providers —facing complicated rules and risks associated with being a fiduciary— may choose not to work with individuals with small or modest accounts. This would leave our country's most precarious investors without vital sources of information they need to be successful in retirement.

With approximately 800 comment letters and four days of public hearings, the DOL has much to consider. Rather than reiterating arguments provided by other commenters, we at Milliman offer some practical suggestions on modifications to the Proposed Rule.

#### **Maintain and broaden the existing definition of Investment Education**

We suggest that most of Interpretive Bulletin 96-1 be preserved. Doing so permits call center personnel of recordkeepers to continue to provide limited information relating to investment and distribution options to plan participants, without being deemed a fiduciary. We know by experience with our own clients, with whom we partner in defined contribution plan administration, that the call center is often the sole source of information available to a plan participant. In particular, small investors rely on these call center employees to provide basic information on available fund selections, risk factors, and asset allocations.

It is also common for plan participants to obtain information related to investment options and distribution options directly from an employee of their employer. Including these Plan Sponsor employees as fiduciaries would end this practice and eliminate a basic source of information that is particularly vital to the small investor, who cannot access other sources of investment information. Therefore, we suggest the Proposed Rule be amended to clarify that these employees can provide Investment Education consistent with the guidance of Interpretive Bulletin 96-1 without being deemed a fiduciary.



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In addition, information regarding the mechanics of roll-overs, distributions, or loans from a plan should be excluded from the definition of Investment Advice and should be considered a part of Investment Education. Merely obtaining information on the procedure for effecting a roll-over, distribution, or loan should not be included.

#### **Variable annuities within Individual Retirement Accounts**

Enabling American workers to accumulate assets is only a part of the public policy goal; the other part is the prudent use of the individual's portfolio to buy goods and services throughout retirement. Investors are concerned with ensuring that their retirement assets last for their lifetimes. Milliman is an actuarial consulting firm and both the undersigned are credentialed actuaries, which makes us quite familiar with the evidence that average life expectancy has increased by several years when compared to studies conducted over several prior decades. The use of variable annuities is a valuable method of ensuring this lifelong stream of income. As with fixed annuities, variable annuities increase retirement security, and variable annuities within IRAs should also remain subject to Prohibited Transaction Exemption 84-24.

#### **Grandfather existing variable annuity and mutual fund investments**

We urge that a thoughtful grandfather provision for legacy variable annuity and mutual fund investments held in retirement plans be incorporated into the Proposed Rule. For example, to protect existing investors, if there is no change to proposed treatment of variable annuities, then recommendations to "re-allocate" or "hold" current variable annuity and/or mutual fund investments through IRAs should be specifically grandfathered.

#### **Increase the implementation timeline**

Should the Proposed Rule be implemented in its current form, it would require a dramatic shift in business processes throughout the retirement industry. We respectfully submit that eight months to implement these changes is technically impossible and inconsistent with transition timelines imposed by federal agencies for new regulations. The implementation of the rule should be phased in over a number of years. Specifically, the contract, conflicts of interest and disclosure requirements of the best interest contract exemption should be phased in during a period of no less than three years from when the rule is finalized.

Milliman provides many types of services that would be impacted by the Proposed Rule; we provide recordkeeping services and investment advice to various plan sponsors, we work directly with a large portion of insurance companies globally, and we provide risk management and hedging strategies to various SEC-registered products.



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We work diligently to make sure our services are high quality and our primary goal is to serve the best interests of our clients and the owners of the savings plans. The Proposed Rule as drafted does not serve the best interests of our clients, the investing public as a whole, or DOL public policy goals.

Our thanks to the DOL for your time to read our comments. We are available to answer any questions you have. Mr. Mungan can be reached at [Ken.Mungan@milliman.com](mailto:Ken.Mungan@milliman.com). Mr. White can be reached at [Steve.White@milliman.com](mailto:Steve.White@milliman.com)

Respectfully submitted,

A handwritten signature in black ink that reads "Kenneth F. Mungan".

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Ken Mungan  
Chairman of the Board

A handwritten signature in black ink that reads "Stephen A. White".

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Stephen White  
Chief Executive Officer