



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 NW
Washington, DC 20210

Subject: RIN 1210-AB32

Ash Brokerage is pleased to submit additional commentary from our previous comment letter dated July 20, 2015, on the U.S. Department of Labor's (DOL) proposed rule regarding Conflict of Interest, published April 20, 2015. Our comments in this letter are confined to our expertise in annuity distribution and are intended to address requests from the DOL Panel during the public hearings on suggested policies and procedures to make the proposal more workable and less onerous while providing suggestions on policies and procedures. Additionally, we continue to express concerns about implementation of the proposal and the unintended consequences on independent and non-captive distribution.

Ash Brokerage conducts business with independent agents, national and regional broker-dealers through their registered representatives, and dually licensed registered investment advisors. We are one of the largest independently owned firms helping Americans with their retirement income strategies. In 2014, our firm assisted agents and financial advisors who were helping more than 10,000 American families meet retirement income needs and objectives.

We ask the DOL to *clarify the definition of fiduciary*. Throughout the hearings, many panelists interpreted the proposed definition in various ways. The current language leaves too much room for financial professionals to interpret, and broker-dealers need clarity for supervisory purposes. We firmly believe that conversing with prospective clients about the financial professional's credentials, their firm's expertise and reputation, and services provided to the public does not meet the definition of a fiduciary as interpreted by many in the proposal's release. Specifically, we would like to see examples of when the DOL views the relationship moving from an educational to a fiduciary status. When, and if, the financial professional's relationship transfers to a fiduciary relationship needs to be clearly identified in the final proposal. We ask that any contract and disclosure delivery coincide with the client engagement moving to a fiduciary relationship.

In regards to client engagement, Ash Brokerage requests that language in the final rule *place the client in control of the engagement*. We find that many clients hold assets with various financial institutions, and clients look to different professionals for specialized advice above holistic planning. Therefore, we think it is appropriate for the client to define the level of relationship they wish to have with each financial professional. Some relationships will dictate a fiduciary relationship, while others will have a narrow scope and require only a suitable standard. Obviously, the industry must

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work with the DOL to develop educational materials about the scope of client engagements to facilitate the best engagement level for the client.

Assuming the client agrees to move forward with a financial professional, we would like to see more ***uniformity in the proposed client contract***. We feel the Best Interest Contract (BIC) Exemption promotes a bias against commission-based products. As discussed in day one of the hearings, conflict of interest can arise with more than just commission-based products. There can be a bias in every kind of financial solution – it could be from extra billed time, accumulating assets under management versus risk mitigation or other methods of the financial professional earning income. We believe all financial professionals should disclose potential conflicts, regardless of nature, at the representative level and the firm level. Thus, a client engagement needs to be neutral to *any* potential services provided. And, we need to clearly define the scope of the engagement between the financial professional and client.

Additionally, the disclosure for ***costs associated for the service or solution should be expressed in present value (today's dollars)*** to illustrate the impact of a first-year commission versus an ongoing fee. Reasonable and standardized growth assumptions should be placed on fees charged to assets tied to fees or time, and applied as a percentage of assets or net worth. Discounting factors for present value should be tied to readily identifiable benchmarks, such as government released cost of living indices or Treasury rates. Comparing the costs of product selection on a present value basis creates uniformity and a less biased presentation to the client. We believe this disclosure is best ***presented to the client at time of implementation*** during the sales process. It would be inappropriate to assume any product or service solution prior to this point in the sales process. Therefore, the client retains control of the client relationship through the initial client engagement process, and the client continues to remain informed at any change in compensation via a comparative disclosure of different product solutions. (The use of an advisory-based platform remains a product solution.)

Ash Brokerage requests that the DOL ***set standards and add clarity to the definition of "reasonable compensation"*** when it issues its final ruling. We believe safe harbor ranges must be included for appropriate and effective distribution of solutions through broker-dealers. Without safe harbors, we sense many broker-dealers would limit distribution or create their own acceptable range. Not only would this limit products to consumers, but it would also create financial professional disparity in earnings within the industry. We feel the DOL, working with industry manufacturers, can establish ranges of commission based upon the length of the contract or election of certain lifetime income riders, for example. Safe harbors allow distributors and manufacturers enough guidance to maintain an efficient marketplace for product pricing and future product development. Examples might be a range of 2.5 percent to 3.00 percent for a five-year fixed annuity. We believe the 50bps variance allows for manufacturers to price embedded riders or liquidity options for consumer value and product differentiation.



Finally, the hearings revealed a need for *ideas on oversight and supervision*. We believe many of the following metrics exist today and should not create undue hardship on manufacturers or distributors to identify potential conflicts of interests. Data points can be pulled that look at a financial professional's concentration by carrier or product. With today's technology, insurance carriers should be able to provide this information to the broker-dealer or agency. Broker-dealers and agencies can then compare the concentrations with fund families or insurance carriers to identify potential conflicts that might exist within their book of business or through the firm's existing, known conflicts. By having different levels of engagement, a supervisory office would easily be able to see if the financial professional has a bias toward either fee, asset-based charges or commissions. If we are *truly client focused, some level of parity should exist*. If parity does not exist, discussions about the business model and client recruitment can easily be pinpointed. A balance of product concentration and client engagement can provide an insight into the sales process at a supervisory level that leads to mitigating conflicts.

We believe that a clearer definition of fiduciary, impartial client engagement contracts, meaningful safe harbors for reasonable compensation, and guidance of supervisory metrics create a meaningful impact in the financial services community. We would like to reinforce our support and appreciation to the DOL for their careful and diligent efforts to bring greater transparency to the client relationship. Ash Brokerage supports operating in a best-interest manner for our clients. We hope to continue working with the DOL, our manufacturers and our distributors to make the final ruling workable, enforceable and meaningful.

Sincerely,

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