

July 20, 2015

**VIA ELECTRONIC FILING – [www.regulations.gov](http://www.regulations.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: RIN 1210-AB32: Proposed Definition of Fiduciary Investment Advice**

To Whom It May Concern:

The Council of Insurance Agents and Brokers (“Council”) appreciates this opportunity to comment on the Department of Labor’s (“Department”) proposed definition of fiduciary investment advice (“proposed rule”) under the Employee Retirement Income Security Act of 1974 (“ERISA”) and the Internal Revenue Code of 1986 (“Code”). The Council represents the largest and most successful property/casualty and employee benefits agencies and brokerage firms. Council member firms annually place more than \$200 billion in commercial insurance business in the United States and abroad. Council members conduct business in some 30,000 locations and employ more than 120,000 people worldwide. In addition, Council members specialize in a wide range of insurance products and risk management services for business, industry, government, and the public.

***Scope of the Proposed Rule***

Under the proposed rule, “a person renders investment advice with respect to moneys or other property of a plan or IRA” if the person provides, in exchange for direct or indirect compensation:

- (1) A recommendation as to the advisability of acquiring, holding, disposing or exchanging securities or other property (including a recommendation to rollover assets or take a distribution);
- (2) A recommendation as to the management of securities or other property (again, including rollover and distribution decisions);
- (3) An appraisal, fairness opinion, or similar statement—verbal or written—concerning the value of securities or other property when provided in connection with a specific transaction; or

(4) A recommendation of a person who is also going to receive a fee or other compensation for providing the aforementioned types of advice.

The proposed rule defines “plan” as “any employee benefit plan described in section 3(3) of [ERISA] and any plan described in section 4975(e)(1)(A) of the Code.”<sup>1</sup> Section 3(3) of ERISA includes employee pension benefit plans *and* employee welfare benefit plans, such as health, life, and disability insurance.<sup>2</sup>

***Non-Cash-Value Welfare Benefit Plans Should be Excluded from the Rule***

Given its broad definition of “plan,” the proposed rule has been interpreted by some to include recommendations provided in connection with traditional welfare benefit plans like health, accident and disability insurance—plans that are not investment vehicles and thus do not logically fall within the realm of *investment* advice. Department officials confirmed at a meeting on May 20, 2015, and during a phone conversation on June 3, 2015, that the Department does not intend to cover welfare plans that do not have an investment component (i.e., plans that are not designed to generate income or increase wealth) in this rule-making. The Council urges the Department to clarify this point and exclude non-cash-value welfare benefit plans from the final rule.

The Department could achieve such clarification by adding a definition of “other property.” For example, the definition could read:

“‘*Other property*’ for purposes of this section does not include non-cash-value welfare benefit plans, such as health, accident, disability, and life insurance products, that do not generate income or create wealth for future use.”

Alternatively, the term “investment” could be defined as follows:

“‘*Investment*’ for purposes of this section does not include the purchase, sale, holding, or exchanging of non-cash-value welfare benefit plans, such as health, accident, disability, and life insurance products, that do not generate income or create wealth for future use.”

In addition to these suggestions, there may be other ways for the Department to effectively carve out non-cash-value welfare plans from the rule. The Council strongly encourages the Department—by whatever means—to make clear that these plans are not covered under this rule-making.

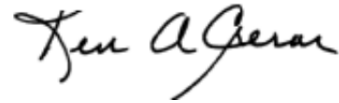
Thank you for your consideration.

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<sup>1</sup> Proposed 29 CFR 2510.3-21(f)(2)(i).

<sup>2</sup> 29 U.S.C. § 1002(3).

Respectfully submitted,

A handwritten signature in black ink that reads "Ken A. Crerar". The signature is written in a cursive style with a prominent loop at the end of the last name.

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