

September 12, 2015

RE:

Definition of the Term Fiduciary (RIN 1210-AB32);
Best Interest Contract Exemption (ZRIN 1210-ZA25)

Submitted electronically e-ORI@dol.gov e-
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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

Dear Secretary Perez:

I am writing to you today in regards to the proposed fiduciary rule on retirement accounts. I am an Independent Financial Advisor/Registered Representative. I am a small advisor, I work with rather small accounts and very middle of the middle class kinds of clients. My clients are small town people who do not have the time or knowledge to invest or plan for retirement without the help of someone like myself.

I often use variable and fixed annuities to serve my clients desire to provide a lifetime income stream from their retirement assets. This often comes in the form of what is called a Living Benefit Rider. These additions to the annuity contract can provide a certain percentage of annual withdrawal based on the client's age, account value and possible investment gain. This percentage is a guaranteed annual payment made to the client for life, regardless of market declines. The client can predict how much he will get at minimum for the rest of his life. This is without having to annuitize the contract and gives the client full access to the cash account value of his annuity without giving up control of the assets to the insurance company. The money can continue to grow in the investment options and can increase the guaranteed annual amount. This is what we like to call insurance on your retirement. It cannot be outlived and can continue to pay the client even if the account value falls to zero. These riders can generate a lot more than is deposited, depending on the longevity of the client. There are also the Death Benefit Riders, which can provide a return of principal minus withdrawals and in some cases do not decrease at all by withdrawals. This means that if a client dies in a down market, his beneficiaries don't have to suffer a financial loss as well. I have had a client pass away and leave an annuity with approximately \$350,000 in the account value, but the death benefit was \$480,000. This means that the beneficiaries received about 130,000 dollars more than they would have in any other investment vehicle. Of course there are fees associated with these contracts. There is the basic Mortality and Expense fee (M&E), this is a fee to provide the standard Return of Premium Death Benefit as well as offset the risk that the insurance company takes on when issuing these contracts. The riders also have associated fees. But like all investments and most other things in life, there is a cost. These costs however, offset the risk to the client of A. Outliving their money, B. The Risk of dying in a down market, C. Offers tax deferral, D. Allows tax-free and sale charge free transfers among the various investment options (Subaccounts). In some states, like mine, these annuities offer a protection of the assets from creditors. Unlike mutual funds and other investment

vehicles, the commissions paid to the advisor are paid from the insurance company coffers and not from the assets that are invested by the client. Most mutual funds, the client takes a "haircut" on their money immediately in the form of a sales charge and there are no riders or additional benefits that you would get through an annuity contract.

My concern is that under the proposed rule, I as a small, independent advisor, will no longer be able to use these fine investment vehicles to help secure my clients retirement. Or worse that the rule will completely eliminate my career as I will find it harder to service my clients effectively or make a livable earning doing my job. I love my job; I have been doing this for 10 years now. I have has several people shower me with wonderful compliments for a "job well done". It is fulfilling to put people's minds at ease, knowing they will get that check every month or year, no matter what happens in the worldwide equity and bond markets. It is fulfilling to deliver a death benefit to a beneficiary that can be much higher than the account value was the day their loved one passed away. Losing a loved one is always tough but when you deliver that check, it can make a huge difference in someone's life. I do put my client's interest ahead of my own. This is why I am able to get those compliments, make a good living some years, and get referrals that drive my business forward. This is why when markets start declining; I can put client's minds at ease because they will get that income year after year after year no matter what. I urge you as the Secretary of Labor, whose mandate is to create and keep Americans employed, not to let this rule affect my business to the point where I will be unable to earn a living or to provide my small town, middle class clients with a very effective tool to help them and their families make the most of the money they have worked hard for. Investing and having access to these kinds of vehicles should not only be for the ultra wealthy or only be provided by large or mega advisory firms. My clients, who include my grandparents, rely on me because they know me and I know them. My job is to learn their desires, fears, and ideas about retirement, and to alleviate those fears and help them achieve those ideas and goals. I can provide them personalized service that a "roboadvisor" or passive index fund cannot give them. Annuities can provide them with guarantees that nothing else can even come close to doing.

It is a good business, Mr. Secretary, one that allows me to help regular people and make a decent living at the same time. I know you are an educated man, I have read about you. This is why President Obama has selected you to lead one of the executive departments. You have achieved one of the highest offices in our country, and are living the American Dream. I'm sure you are proud every morning to go to work for America and for the success you have attained. My clients and I are also proud of the work we do. We also want to succeed and enjoy the American Dream. Let us continue to be proud to live in a country where you can earn a good living, plan well for retirement and then utilized the savings that you put away to finance that dream. Please do not allow this proposed rule to hinder us from doing so and enjoying the results our hard work.

Thank you sir.

With absolute sincerity,

Michael Costello
President
Costello Financial Group
Registered Representative-HD Vest Investment Services