August 7, 2017

TheStandard®

Mailed Electronically: EBSA.FiduciaryRuleExaminations@dol.gov

Office of Exemption Determinations, EBSA
Attn: D-11933
US Department of Labor
200 Constitution Avenue NW, Suite 400
Washington, DC 20210

RE: Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (RIN 1210-AB82)

Greetings:

Standard Insurance Company and Standard Retirement Services, Inc. (collectively, "The Standard") appreciate the opportunity to provide additional information that could form the basis of new exemptions, changes or revisions to the Fiduciary Regulations (the "Regs" and their related Prohibited Transaction Exemptions (the "Exemptions"). The Regs and Exemptions in their current form present many challenges and detriments to both retirement plan investors and financial service providers. We thank you for considering the consequences that the changes to the Regs and the Exemptions have had, and urge you to make revisions.

The Standard is an Oregon-based financial services provider with a national presence. Through our affiliated companies, we provide a variety of financial services, including individual and group annuities, full service retirement plan platforms and group and individual insurance products.

We offer the following comments in response to certain questions from Department's Request for Information.

In question #4, the Department notes that many commenters have expressed concern regarding the unintended negative consequences to investor costs, and access to advice. The Department is interested in the possibility of regulatory changes that could alter or eliminate contractual and warranty requirements.

In our experience, the costs of the additional exemption conditions far outweigh the benefits to both retirement investors and financial service providers. In President Trump's February 3rd memorandum to the Department, he asked the Department to consider "Whether the Fiduciary Duty Rule is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services." The Section II(f) ineligible contractual provisions of the BIC Exemption, such as the limitation on arbitration or mediation, promotes the use of class action lawsuits as an enforcement mechanism. Class action litigation is not an efficient manner of enforcement, as it is extremely costly to advisers and other service providers, and those additional costs are inevitably passed on to consumers.

Even without the "class action clause" of the BIC Exemption, a tremendous number of cases have already been brought against financial service companies. The way the BIC Exemption is

Standard Insurance Company
920 SW Sixth Avenue
Portland OR 97204-1239
tel 888.937.4783

structured, supervising Financial Institutions already have incentive to over-see the actions of their advisors, without additional contract and warranty requirements. On the insurance side, insurance agents are already subject to stringent state insurance law suitability standards. Additionally, the current version of 84-24 already offers inherent protections, including commission disclosures, a requirement that compensation is reasonable, and record-retention requirements.

In question #7, the Department asks a number of questions centering on the possible development of "clean" shares by mutual fund companies.

In the qualified retirement plan space, we and other firms have for some time been 'neutralizing' conflicts of interest with respect to mutual fund choices by passing all revenue sharing back to plans or plan participants. Considering that this existing approach, which is addressed by several published PTEs[1], is a viable option for removing conflict of interest, it seems that these new "clean" shares are not necessary as a sole means to neutralize conflicts of interest. Additionally, the Regs have caused a sharp increase in the number of share classes that recordkeepers must support over a short period of time. Already this year, we anticipate having to assimilate almost 4,000 different share classes onto our recordkeeping platform and fee disclosures. Since the elimination of conflicts of interest is already achievable by passing revenue sharing back to the plan, the additional share classes have added much administrative expense with arguably little benefit.

Furthermore, we strongly believe that the Regs should not favor one type of investment over another. While fee-based investments can remove some level of conflict of interest, there are certain types of investors who may be better off paying commissions. The Financial Industry Regulatory Authority ("FINRA") states that firms must consider the anticipated level of trading activity in the account as well as the benefits of other available fee structures.[2]

In question #8, the Department asks a series of questions regarding fee-based annuities.

Fee-based annuities are not the best or only answer for potential conflicts in the annuities market. In favoring fee-based products, the Department assumes that fee-based products will always yield lower costs to consumers than commissions, but this is not always the case. Since annuities are designed as buy-and-hold products, commissions can be lower than fees over time.

In terms of the logistics of how fee-based annuities would work, we believe that, essentially by definition, advisors would not receive compensation from the insurance company for selling a fee-based annuity, but rather, advisors would charge fees to their clients. Since, relatively speaking, there are adverse tax consequences associated with deducting those fees from the annuity, the fees would usually be deducted from other assets that the client has with the advisor.

Insurance carriers cannot instantly create fee-based annuities. We believe that surrender charges will be lower on fee-based annuities than on commission-based annuities due to the lack of front-end commissions, thus carriers will need to undertake regulatory filings. Realistically, the timeline for most companies to move from intent-to-create to actually launching a product design change is about a full year. That's why relatively few carriers have been able to begin offering fee-based annuities so far, and it would be helpful for the timeline of the Regs to be reasonable relative to this need.

Also, given the buy-and-hold nature of annuities, we expect that most consumers will end up paying more in fees over time than insurance companies pay in commissions. Since a key stated purpose of the fiduciary rule is to reduce producer compensation, an increase in fees seems to be an

---

[1] PTE 97-15A (Frost), PTE 2005-10A (Country Trust)

[2] https://www.finra.org/industry/fee-based-account-questions-answers

unintended, adverse consequence. Researcher Morningstar Inc. says fee-based accounts can yield as much as 50% more revenue for financial advisory firms than commission accounts." [3]

In question #10, the Department asked if a streamlined exemption based on a model set of policies and procedures would be helpful to the regulated community.

A streamlined exemption that relies on other regulatory agencies such as the Securities and Exchange Commission or the state insurance departments for annuities could be helpful. These two regulatory bodies have vast experience regulating financial products and annuities. These types of model policies and procedures would be best left to those experienced regulatory bodies.

In question #13, the Department asks for comments on ways to simplify the Best Interest Contract Exemption.

We would welcome a model disclosure, but it would be more helpful in the individual annuities market to remove the product restrictions from Exemption 84-24 and for it to apply to all annuities. Revised Exemption 84-24 is already quite comprehensive in its disclosure requirements and is subject to the Impartial Conduct Standards. Expanding the coverage of Exemption 84-24 to other annuity products, such as fixed index annuities, would increase retirement investors' choice and access, two areas of concern listed in the President's memo. Expanding 84-24 would allow independent insurance agents to continue selling these popular products, while currently this important distribution channel is ineligible for the BIC Exemption.

Question #14 asks whether recommendations to make or increase contributions to a plan or IRA should be expressly excluded from the definition of investment advice.

In the Department's Conflict of Interest FAQ (408B-2 Disclosure Transition Period, Recommendations to Increase Contributions and Plan Participation), the Department addressed this issue and gave examples of where recommendations to make or increase contributions to a plan or IRA would be excluded from the definition of investment advice. This clarification is very helpful to both retirement investors and financial services firms.

There has also been concern that certain contribution calculators could be construed as investment advice. A contribution calculator might include certain items such as income, account balance, rate of contribution, age, retirement age, and other assets. The retirement investors can then "slide" the deferral rate up or down to see how increases or decreases in their contribution percentage can impact their retirement readiness. An additional example or an exemption setting parameters for these calculators, and or classifying them as "education", would be beneficial and would make financial service firms more comfortable providing this type of information to retirement investors.

Question #16 addresses questions on the grandfathering provision of the Best Interest Contract Exemption. Specifically, the Department asks whether the grandfathering clause has affected the availability of advice to investors.

Unfortunately, but predictably, the Grandfathering clause has caused many advice providers to curtail advice to investors. It is easy to understand why – under the grandfathering clause, any 'new' advice given to an investor after the effective date would have to be provided under the new standards. Even for advisers who fully intend to comply, the onerous requirements of the Regulation could require more time to complete compliance efforts than is practical given the current

[3] https://www.wsj.com/articles/banks-rack-up-advisory-fees-as-fiduciary-rules-future-hangs-1492556530

applicability dates. For advisors who no longer intend to provide advice, the grandfathering clause leads them to cut off existing clients as of the effective date.

Expanding the Grandfathering provisions of the BIC exemption would make this exemption less onerous for both retirement investors and financial service providers. The BIC Exemption exempts prior purchases, but not new investments. Expanding the Grandfathering exemption to new purchases, if they are in the same investments, would make the BIC Exemptions less burdensome.

In question #17, the Department asks for comments on an exemption for insurance intermediaries, and on expansion of Exemption 84-24.

Creating an exemption for insurance intermediaries to serve as Financial Institutions under the BIC is not the best answer. Insurance intermediaries are not organized to supervise agents in this way. Exemption 84-24 already provides good consumer protections for the purchase of all annuities. The better answer in this case would be to revise Exemption 84-24 to cover all annuities.

Alternatively, if the Department is not willing to cover all annuities under Exemption 84-24, at a minimum it should cover fixed indexed annuities. We believe that fixed indexed annuities belong under Exemption 84-24 because fixed indexed annuities are fundamentally similar to other fixed annuities, particularly in the guarantees that they provide to purchasers against loss. For over two decades, law firms have been providing legal opinions to insurance carriers that fixed indexed annuities by the nature of their product are designed to fit under the same SEC Section 151 safe harbor as fixed annuities. The Dodd-Frank law then further settled the matter by legislation, indicating that fixed indexed annuities are not securities. Securities do not provide the same level of protections against principal loss, hence the need for stronger consumer protections in the fiduciary rule.

Conclusion:

While we appreciate the Department's willingness to make changes to the Regs and Exemptions, a possible repeal of the changes to the Regs and the Exemptions should still be considered. In general we support the application of the Employee Retirement Income and Security (ERISA) fiduciary standards and the best interest standard, however the regulation of broker dealers and RIAs has historically been the jurisdiction of the Securities Exchange Commission. Likewise, the states have historically had oversight and responsibility for insurance companies and insurance products. We join with the American Council of Life Insurers (ACLI) and reiterate that revised Regs and the Exemptions exceed the Department's statutory authority and attempt to regulate areas of law that have historically been controlled by other regulatory bodies. It would be in the best interest of retirement investors and the regulated community to have one set of guidelines and a clear message so that retirement investors may be best served.

Sincerely,

Christopher L. Conklin

Christopher L. Conklin
VP, Individual Annuities
Phone: 971.321.7040
chris.conklin@standard.com

Kristen Solo

Kristen Solo
Senior Attorney
Phone: 971.321.8382
kristen.solo@standard.com