Employee Benefit Systems, Inc.

ebs financial group

6511-C Basile Rowe – East Syracuse, NY 13057

September 16, 2015

Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
Attn: Conflict of Interest Rule
Room N-5655 and Suite 400
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

RE: Conflict of Interest Rule

Dear Mr. Perez,

I have hesitated to comment so far on the proposed new fiduciary rules. But the more I read and knowing that this is the last time to comment, I have decided to go on record.

First, I am not a broker/dealer. I am affiliated and contracted as a Registered Representative with the Cadaret Grant broker/dealer. I am not a RIA (Registered Investment Advisor), but do provide RIA type services through my broker/dealer as an IAR (Investment Advisor Representative).

What I am is an owner of a TPA (Third Party Administration) firm and investment advisor to defined contribution plans. I started my firm 24+ years ago saying that I was not allowed to be a fiduciary but would always act as if I was a fiduciary. I receive commissions and/or fees depending upon each specific plan's contract for services, but never both. In some instances my TPA firm may receive revenue sharing from those few retirement plan platforms that we may use.

While I oppose your undertaking, I do not oppose the goal. But let me focus on two aspects of the proposed rule specifically - retirement plan to IRA rollovers and participant education.

Telephone: (315) 432-5522 Facsimile: (315) 432-5468
E-mail: bermanj@ae.cadaretgrant.com

First, while a plan participant is saving money as in a 401(k) plan, they are hopefully speaking with a knowledgeable advisor. Assuming so, and assuming that participant has built a positive/constructive relationship with that advisor, then why wouldn't those same investments still be good for the person when he/she leaves that employer's plan? The answer is they would.

In my office the standard procedure is to convert the account to an IRA 'in-kind.' That means the participant has the same funds at NO cost. And do you know that an A-share expense ratio for an IRA is less expensive than an R-share expense ratio inside a retirement plan? In other words today you own a fund inside the 401(k) account as an R-share and tomorrow you own that same fund as a less expensive A-share at NAV (Net Asset Value). I as the advisor collect a lower trail commission in the A-share, but the relationship between me and the investor remains intact. Under the proposed rules that plan participant will have to go find a new advisor/broker with whom he/she has no relationship nor understanding and hope any advice received is the best for them.

Second, advising plan participants. My contracts with plan sponsors includes meeting with participants either quarterly or semi-annually. Anything less often and I am not interested. We always discuss the economy maybe including the Federal Reserve actions, what Congress and EBSA is doing and/or considering, the European Central Bank and Eurozone, and lastly the markets in general. We may suggest growth funds over value funds or bonds as versus equities. We are after all hired to "advise."

Please tell me how what we do is wrong for the plan participant? Please tell me how what we do is not in the best interest of the participant? Your proposed rule will end that practice. How can that possibly benefit the participant?

Sincerely,

Jeffry A. Berman