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Fiduciary; Conflict of Interest Rule-Retirement Investment Advice

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The revised Investment Advisor conflict of interest regulations should certainly help plan participants and IRA holders to obtain better and more cost efficient investment solutions. There are however two issues that I would like to comment on. First is one that will likely be a common criticism of the regulations. This being that the additional efforts and costs the financial sector will incur to comply with these new rules could result in limiting the availability of advice to individuals with small balances. This could lead to a cohort of individuals not being able to receive any advice. This is a problem that needs to be addressed however should not be considered as so great to nullify the good that the regulations will provide.

The second issue is more nuanced but extremely important to retirees. Plan participants and IRA holders require a different level of advisory service as they approach their retirement years. Accumulating funds takes a back seat to establishing a de accumulation strategy of funds designed to last an unpredictable lifetime. Plan participants covered under defined benefit plans have a cost efficient de accumulation strategy easily available; election of a life or joint and survivor annuity benefit. This is true for both traditional and cash balance plans. Other individuals have the opportunity to use their retirement funds to purchase fixed insured lifetime annuities either commencing immediately or deferred into the future (longevity insurance). Even if the plan does not provide these options they are available under IRAs.

The vast majority of advisors who service the retirement plan and IRA market are investment oriented. Their expertise is in managing assets. There are several reasons why they might not recommend to clients that they consider employing their retirement savings to secure a guaranteed lifetime income.

1. **Not sufficiently aware of longevity risk and financial challenges facing elderly**
2. **Not aware of the scope of products available to secure guaranteed lifetime income**
3. **Not licensed to sell these products**
4. **Misinformed about the risks associated with a defined benefit plan annuity payment or an insurance company fixed or deferred income annuity**

5. **Small or no financial incentive to recommend these approaches or products**

It is imperative that individuals approaching retirement who are faced with the challenge of creating lifetime income be aware of lifetime guaranteed income options available. There appears to be nothing in the proposed regulations that would require that advisers assist in this regard. Retirees may not be provided with such options that are worth consideration. Whether they are in the best of interest of the individual can be only be determined if they are aware of the options and can make an objective evaluation. Modifications to the regulations are therefore necessary to correct for this deficiency. There are several ways that this problem can be addressed. Below is one simple approach.

Since few plan or IRA investment advisors are inclined to recommend guaranteed lifetime income options (often for financial incentive purposes), an additional disclosure should be required for age 60 and older clients. The disclosure should be designed with the primary intent of making certain that these clients are aware that there are approaches to securing lifetime income (defined benefit plan annuity options when available and insured fixed income annuities) that may not be recommended by the advisor. This additional disclosure needs to provide these clients with access to a DOL website that would help them to better understand these options and determine whether it might be in their best interest to consider them.