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Department of Labor
Washington, DC

RE: Federal Register Number: 2017-04096

I am writing to comment on the proposed 60 day extension of the applicability date.

First, by way of introduction, I want to provide my background to help provide a context for my comments.

- I am an owner of several fixed and indexed annuities, 401k's and other retirement accounts.
- I am an actuary by training – a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries
- I have been working in the field of annuities for more than 20 years.
- Although never a licensed agent or advisor, I have encouraged family members and friends to buy fixed and indexed annuities because of their unique mix of benefits and guarantees.
- I have been a owner of an Independent Marketing Organization that worked to educate and market to both distributors and the public the value of annuities and other insurance products. In 2015 I sold my interest in this organization.
- I am currently a senior consulting actuary specializing in annuity products.
- My comments below are my own and may not reflect the positions of my employer.

The DOL's Conflict of Interest Rule, or Fiduciary Rule as it has been termed, is a highly complex and exceedingly powerful executive rule. The rule claims a simplicity – that advisors act in the best interest of their clients. The simplicity of this statement is extremely powerful in that it packages a seismic shift in just a few appealing words.

The existence of several lawsuits filed against the rule by numerous high profile organizations representing tens of thousands of jobs is a strong indicator of the rule's gravity and import.

The thousands of pages of documentation prepared by the DOL to articulate the rule together with hundreds of additional pages of supporting and clarifying language provides a clue to this complexity.

Further, a vast number of both public and private articles have been written from a myriad perspectives on the rule.

Stock values have shifted dramatically on the appearance of the rule and then on the prospect of legal or regulatory limitation of the rule.

Hundreds of millions of dollars have been spent on evaluation, compliance and legal reaction to the rule.

Proponents of the rule have suggested this vast energy release over the past 10 months since the final rule was issued has been caused by self-interested sellers and the industry behind them defending their way of life. They suggest, with the framers of the rule, that retirement savers have lost billions of dollars to unscrupulous, conflicted sellers of inferior savings products.

What is really going on here?

Does the rule:

A. Correct conflicts of interest that have been bleeding the funds of retirement savers for decades; OR
B. Significantly disrupt the efficient but fragile delivery of beneficial retirement products?

Consider these self-evident facts:

1. Ensuring compliance with the Conflict of Interest Rule will cost Financial Institutions in several manifest ways:
    a. Modification of current oversight systems that take into account the new fiduciary obligations, minimizing conflicts of interest, etc.
    b. Additional ongoing oversight of sellers of retirement products.
    c. Additional risk coverage against potential litigation deriving from the intentionally increased legal liability created by the rule.
    d. The above costs may create second tier cost effects deriving from lost business and other lost efficiencies.
2. The expected costs of any business are carried fully by the customers of that business.
3. Thus the fiduciary rule must increase the cost of retirement products.

The question then is whether these indisputable cost increases are offset by reductions in "conflict of interest" costs. This is a highly complex question because both of the inputs to the question (DOL Conflict of Interest Rule Compliance Costs and actual Conflict of Interest costs) are each highly complex, and the relationship aspect of the question is additionally complex.

There are further effects of the rule not contemplated by the above outline. This includes the reduction of competition deriving from lost competitors who could not withstand the additional compliance costs or lost due to other reasons deriving from the rule.

Looking only at the cost outlay spent in 2016 to evaluate and begin to bring companies into compliance, it is obvious that the costs anticipated by industry experts is very great.

However, the calculation of lost efficiency vs reduced conflicts is the least of my concerns about this rule. The most troubling and confusing aspect is the pivot point of the entire rule: greatly expanded fiduciary duty.

Although the courts have considered this issue in the recent lawsuits, the primary finding has not been that greatly expanded fiduciary duty is beneficial. The finding has been the more general opinion that the DOL does indeed have the authority to issue the rule.

No one can know whether greatly expanded fiduciary duty will be beneficial because it has not been applied before in the US in any industry.

I will not here consider the limited scope of fiduciary duty as historically practiced under ERISA with its five factor test. However, it is very relevant to consider that whatever success may be attributable to the fiduciary requirements under ERISA prior to 2017, these successes must be understood within the highly limited scope of those requirements. The fiduciary responsibility was an exceptional condition when considered in the wider universe of retirement related transactions. Further, it must be understood that because the wider retirement industry operated outside the fiduciary scope, this fact impacted many aspects of the fiduciary requirement, for example concerning reasonable compensation.

There can be no minimizing the appeal to consumer groups of the notion of a fiduciary for every retiree. To bind all advisors to the elements of fiduciary duty: prudence, loyalty, reasonable compensation, fair dealing is obviously compelling to these self-appointed voices. However the cost and disruption that must follow from this universal binding of all distributors is not obvious and is the primary directive of the president's memorandum.

The US market based economy has, among other factors, driven our country to economic preeminence. Fundamental to our free market orientation is the means by which we address conflicts of interest in every business venture. Conflicts of interest are inherent in every market transaction. The seller's interest in every transaction is conflicted with the buyer. At the typical grocery store, layers of conflicts of interest drive the raw food cost far higher than it would be if purchased directly from the farmer. Preparation, packaging, marketing, distribution, insurance all drive the cost of the box of cereal higher – in a clear conflict of interest with the buyer. Yet within these conflicts lie valuable and hidden services. Through this highly conflicted process, fresh oats magically appear on the shelves in my neighborhood store. Of course, I am bled for far higher costs for the many middlemen who participated in the manufacturing and delivery process. Fortunately, regulatory focus has not been trained on the unfairness of these conflicts, but on the efficiency and quality of the final product.

The DOL Conflict of Interest rule with its greatly expanded definition of fiduciary standard applicability, replaces a market driven economy with a regulation driven economy for retirement products. We have seen in countless examples in foreign countries that the strong appeal of "fairness" leads with near certainty to inefficiency. By contrast, competition within free markets leads to delivery efficiency and product quality.

Plainly stated, the greatly expanded fiduciary requirement of the Conflict of Interest rule will change the market for retirement products from an efficient, market based system to a regulation driven one. Although no one can say exactly what the outcome of such a move will be, every historical example of unwinding markets has resulted in reduced access, lower efficiency and weakened quality of the product.

For all the reasons above, I believe the 60 day proposed extension of the applicability date of the rule is far too short. An appropriate evaluation of this rule will be too complex and its import is far too great to limit to such a short period of time.

I welcome any questions you may have on these comments,

Respectfully,

Matthew Coleman

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