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April 17, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW.
Washington, DC 20210

Attention: Fiduciary Rule Examination Via Email: EBSA.FiduciaryRuleExamination@dol.gov

Re: RIN 1210-AB79

Let's keep this simple. There is a difference between recommendations to purchase insurance and recommendations to purchase securities. Premium used to buy an annuity is not under the control of the advisor after the contract is issued. Money used to buy a security or invest in funds is in control of the advisor, the advisor's firm or a third-party assigned by the advisor/firm after the security is purchased.

The management of the investment used to determine interest earned is in the control of the insurance company who issued the annuity (subject to the terms of the underlying contract). The management of the investment in a security or fund is under the control of the advisor/firm/third party manager.

That makes the controlling party of an annuity the insurance company and the controlling party of a security the advisor/firm/third party manager.

In addition, as the Department of Justice pointed out in the lawsuit brought by the National Association for Fixed Annuities, "there is no new federal enforcement mechanism" in the rule considering that the types of annuities contracts [the Rule incorporates] are "already subject to breach of contract claims." Consumers today already enjoy best interest protections because any recommendation that does not address the client's needs, pays unreasonable compensation or involves misleading statements can be adjudicated in court absent the DOL Rule.

All of this makes the recommendation of an annuity IRA very different than that of a security IRA. A comprehensive standard of care required for each unique purchase must appropriately and adequately recognize the difference.

The Fiduciary Rule must be rescinded to properly address a comprehensive standard of care for an insurance recommendation. As President Trump stated in his February 3rd memorandum, the Department is required to complete a re-evaluation of the Rule to determine if it will:

i. Reduce Americans' access to certain retirement savings offerings, product structures, and information;

ii. Result in dislocations or disruptions within the retirement services industry and adversely harm retirement savers; or

iii. Cause an increase in litigation, and an increase in the prices of retirement services.

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Rescinding the Rule is the only appropriate action because:

1. The Regulatory Impact Analysis (RIA) used to justify the costs and benefits of the Rule completely lacked an empirical analysis of the annuity marketplace. Instead the Department relied only on the presumed costs of conflicted advice given by mutual fund advisors. Even worse than relying exclusively on mutual fund advice to adequately project costs, the RIA did not even attempt to provide empirical evidence of the benefits of annuity purchases for consumers seeking to protect their savings from negative market losses or to secure guaranteed lifetime income.

   A thorough analysis of the annuity marketplace and the commission-based distribution system will show that consumers who purchase annuities through a fee-based advisor will **pay the advisor Almost 130% more** in fees than one-time commissions paid to insurance advisors.[1] **That number skyrockets to 900% more** when the annuity (a mortality-based insurance product) is held to maturity.

   When complete, the quantitative analysis will demonstrate that the Rule's complete disregard of the value and cost-efficiencies of commission-based annuity advisors unreasonably favors fee-based advisors at the expense of commission-based advisors. This unfair market advantage will limit advice options and cause consumers to pay more for advice - eroding already under-saved retirement accounts.

   The incalculable liability exposure created by the BIC to an insurance industry already heavily exposed to litigation has caused a disruption in the annuity marketplace and will continue to do so unless this Rule is rescinded. The disruption is the result of the Rule's likely super-sized litigation opportunities for self-dealing lawyers.

   In fact, the Rule has created a new third-party Financial Institution structure for BIC approval with additional costs to adequately supervise and administer the BICE requirements. These additional costs are already being projected to be about 25-50 basis points per dollar of premium. And, this is just for the BIC supervision. These real-life numbers easily demonstrate that the Department grossly underestimated the cost to the industry when it arrived at about 1 basis point per savings dollar.[2] When you add in the additional costs for financial advisors and the insurance companies that will be spent on administration, systems modifications, training and compliance, etc., the assumptions can only be categorized as an uninformed best guess.

   An exhaustive study of real costs to adopt and administer the Rule will show the estimates to be severely depressed and inadequate. Consumers will end up paying much more - far exceeding the $33 million the Department estimated in benefits.

2. The rationale used to require a Best Interest Contract BIC did not include any investigation into the efficacy of the current regulatory structure for retirement insurance products and the robust oversight that already exists to provide consumer protection. Section 7 of the RIA titled "Regulatory Alternatives" make no mention of state insurance regulators or regulation.

[1] Assuming 5% growth and a typical 6.5% commission on a 10-year fixed annuity and life expectancy of 30 years as opposed to a conservative 1% investment management fee.

[2] The Regulatory Impact Analysis assumed costs to implement the Rule to be $16 billion over the first 10 years (with 5 billion the first year) of an estimated $17 trillion-dollar marketplace.

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Since the NAIC adopted its 2010 Suitability Model Law, annuity consumers enjoy an amazing 99% satisfaction rate. This is nearly a **five-star rating** on insured annuities that are saving Americans billions of dollars from market losses and providing a source of guaranteed income to supplement the likely shortfall from social security.

A concise and qualitative study of today's annuity regulation will demonstrate that the Rule covering only one half of the retirement marketplace for insurance products is incomplete and a systemic analysis of the existing governance of the insurance marketplace will conclude that a standard of care for annuity recommendations must incorporate the prevailing regulatory structure.

3. The disparate and complex disclosure requirements under the Best Interest Contract and 84-24 exemptions for fixed rate annuities and fixed indexed/variable annuities will heap reams of paper and thousands of words on the consumer.

   Today, an annuity application, with required disclosures and disclaimers, runs 30-50 pages and typically contains at least 150,000 words. Based on the average adult reading speed of 300 words per minute, annuity consumers are already spending 8 hours merely reading the application. Adding more disclosures and disclaimers that the Rule requires will burden consumers considering annuity alternatives. Intimidated and frustrated consumers will not bother to read or, worse, be paralyzed from taking action that would have helped them save more safely and secure guaranteed lifetime income.

   The Rule's piece-meal and bifurcated approach which forces redundant and confusing paperwork on consumers is misplaced and unnecessary for consumers purchasing annuity IRAs. The additional burdens placed on the consumer to understand and decide does not help Americans save.

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The development of a comprehensive standard of care to address annuity recommendations should be in the hands of the officials who are charged with regulating the products, product manufacturers and product distributors. Regulators who are closest to and with superior understanding of the marketplace must be consulted and their ideas incorporated to ensure the President's mission "to empower Americans to make their own financial decisions [and] facilitate their ability to save for retirement."

Consumers need and deserve a comprehensive, coordinated and effective solution to a consumer-focused standard of care that recognizes the unique advice and control of both insured and invested savings. The approach should judiciously and effectively leverage the safe guards and protections that already exist in today's marketplace.

The Rule must be rescinded because an updated economic and legal analysis will demonstrate that the Rule significantly alters Americans ability to choose the type of financial advice and the advisor from whom they receive that advice.

The Rule must be rescinded because the costs have been grossly underestimated and when correctly adjudicated will show they outweigh any perceived benefit.

The Rule must be rescinded because it is inconsistent with the policies set forth by the Administration.

Please take the only action that will serve annuity consumers' best interests – rescind this Rule.

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