FIDUCIARY RULE'S IMPACT ON ANNUITIES AND SMALL BUSINESSES

On April 20, 2015, the Department of Labor (DOL) released a significant, detailed new proposal to change the definition of fiduciary under ERISA. The new rule broadly defines a fiduciary to include persons who make recommendations to individuals or plan sponsors regarding investments, annuities and other insurance contracts, and rollovers and distributions.

This proposal raises serious concerns as to whether savers and retirees as well as small business owners will continue to enjoy the access they currently have to certain financial products and meaningful education and information on investments, retirement income, and workplace plans.

Significantly Limited Access to Guaranteed Lifetime Income Products

- Today, Americans are living longer than ever and underestimating their longevity, with many living 20 to 30 years after they retire. Seniors need the income protection that annuities and other insurance products provide. *See Illustration: What's Next for Aging Americans?*
- American families count on annuities to provide peace of mind and guaranteed lifetime income. According to a 2013 Gallup survey, 87 percent of annuity owners say they intend to use the annuity as a financial cushion for living beyond life expectancy. *See Illustration: What's Next for America's Retirees?*
- Continued access to information and education on guaranteed lifetime income products has been a priority for the current Administration. In 2009, the Department of Treasury launched an initiative to highlight the importance of guaranteed lifetime income and address regulatory barriers that prevent greater access to lifetime income products for workers. Last summer, Treasury finalized its proposed rule to permit a portion of a defined contribution (DC) plan or IRA account balance to be excluded from the minimum required distribution rules when used to purchase a qualified longevity annuity contract (known as longevity insurance). This year, the DOL is expected to issue a proposed rule to require DC plans to illustrate plan balances as lifetime income and also issue proposed amendments to the annuity selection safe harbor rule.
- As written, the new proposed fiduciary proposal will have the adverse effect—workers will find fewer opportunities to learn more about, and gain access to, guaranteed lifetime income options. *See Illustration: What's Next for Guaranteed Income?*
- Since most employer-sponsored retirement plans do not offer an annuity distribution option, most individuals must roll over their savings into an IRA to access this option. It takes time to appropriately explain the benefits, features, and other important considerations of guaranteed lifetime income products. The compensation paid to agents and brokers reflects this. Under the new rule, agents or brokers may no longer advise on the benefits of annuities because of the potential for litigation on determining reasonable compensation.

- From product development to advertising to sales, life insurers offering annuities comply with state and federal laws and rules that help protect consumers' interests. As insurance products, annuities are regulated by state laws and regulations for the content and marketing of the product. State regulations include extensive product disclosure, strong suitability standards, as well as truth-in-advertising and credentialing requirements. Federal securities laws give the Securities and Exchange Commission (SEC) authority to supervise securities including variable annuities. The Financial Industry Regulatory Authority (FINRA), a self-regulatory organization, which the SEC oversees, sets rules that govern the sales practices of broker-dealers. *See Issue Brief: Comprehensive Regulations Protect Consumers' Interests in Annuity Sales*

Small Businesses and Their Employees Hit Hardest

- Today, close to 80% of full-time workers have access to a workplace retirement plan. Our goal is to reach 100%. Yet the DOL's proposal would severely limit retirement plan options for small business owners and employees.
- The proposal negatively impacts small plan formation by limiting sales activities that encourage small business owners to start up, maintain, or improve their employee benefit plans. The DOL included a "sales exception" or "seller's exemption" that exempts only large plans from this aspect of the rule.
- Life insurers, who are leading providers in the small plan formation marketplace, are concerned that this proposal would make it especially difficult to sell plans to small businesses, impeding the important policy goal of expanding retirement savings. *See Illustration: What's Next for Small Business?*

Moving Forward

- ACLI and its companies support ERISA and its existing fiduciary standards. We will seek to ensure that the new rule is workable for all stakeholders and promotes continued access and product choice. Specifically:
  - Firms seeking to sell investments and investment products to plans, plan participants and IRA owners should be able to both (1) promote their products and recommend them to prospective purchasers, and (2) benefit financially from the successful sale of those products. Without a financial interest, economic activity is stifled and opportunities for buyers and sellers to meet and transact are lost.
  - Sales activities naturally include recommendations to purchase and invest in products and services offered by the seller. Fiduciary status should not apply to persons who make clear that they are selling products and services and not advising customers as to a particular course of action. Merely marketing and making available products and services to small businesses and individuals should not give rise to an ERISA fiduciary duty.