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Financial Security...for Life.

Proposed Retirement Regulations

The Negative Impact on Savers, Retirees, and Small Businesses

OVERVIEW

In 2015, the U.S. Department of Labor (DOL) released a significant new proposal to change the definition of a fiduciary under the Employee Retirement Income Security Act (ERISA).

These new regulations raise serious concerns as to whether savers, retirees, and small business owners and employees will continue to enjoy the access they currently have to certain financial products and meaningful education on investments, retirement income, and workplace plan solutions.

As written, the DOL proposal would:

- Create more obstacles for savers seeking education and information about retirement plan options from financial advisors—including 401(k)s and IRAs—forcing consumers into "robo-advice."
- Limit American retirees' access to guaranteed lifetime income through annuities. This directly contradicts recent bipartisan efforts of both Congress and the Administration to encourage the use of annuities to provide lifetime income for the increasing number of workers retiring without a traditional pension.
- Impede the critical goal of increasing the number of workers at small businesses that are covered by retirement plans. As the fastest growing segment of our economy, these businesses should be encouraged to provide retirement savings plans for their employees, not discouraged by unnecessary barriers.

ACLI has substantial concerns about the proposal. We are working collaboratively with DOL, Members of Congress, and other stakeholders to ensure that any final rule will not restrict activities that encourage low- to moderate-income savings, stifle the formation of small business workplace benefit plans, or deter efforts to inform savers and retirees about the benefits of annuities and other insurance products that provide guaranteed lifetime income and financial protection.

KEY CONCERNS FOR ALL SAVERS

Smart regulation is key as we work together to protect savers and encourage savings. Absent changes, the new fiduciary regulation would:

Limit individuals' access to—and choice of—retirement products, including 401(k)s, IRAs, and annuities. This includes workers seeking advice about how to roll over their retirement savings into an IRA if they leave their job.

Disproportionately impact low- and middle-income savers. The rule would likely result in fewer commission-based services in the marketplace, leaving only fee-based and managed account services—pricing out many low- and middle-income savers from accessing education and information about ways to save for retirement (including first time savers and young workers). According to the Financial Industry Regulatory Authority (FINRA), the proposed regulation could affect 98% of IRAs with less than $25,000.

Force savers into robo-advice. By effectively eliminating commission-based advice, consumers that cannot afford fee-only advice will be forced to get information from 'robo-advisers,' a machine-based solution for complying with new regulations. The DOL acknowledges that their proposal will cause advice gaps in the marketplace, but are pushing robo-advisors to fill the void. Yet, a recent analysis by fellows at the Progressive Policy Institute and the Brookings Institute showed that the cost of depriving consumers of human advice during a future market correction could be as much as $80 billion. Robo-advisers are a poor substitute for human advice.

Eliminate many web tools and other consumer education materials. The proposal would place limits on education activities designed to assist savers with asset allocation and retirement planning. It treats educational materials as "recommendations" if they include references to specific investment products, investment alternatives, or distribution options—including annuities available under a plan or IRA.

KEY CONCERNS FOR RETIREES SEEKING GUARANTEED LIFETIME INCOME

Continued access to information and education on guaranteed lifetime income products has been a priority for the current Administration. In 2009, the DOL along with the Department of the 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. Yet the rule would:

Add legal risks and uncertainties for retirement plan providers who educate savers and retirees on the benefits of annuities. Only 17% of employers offer an annuity option in their retirement savings plans. Most Americans must rollover their retirement savings to have access to guaranteed lifetime income.

Create new barriers for savers seeking guaranteed lifetime income options at a time when guarantees are needed most. The fact that fewer workers have traditional pension plans to rely on, combined with the stress on government programs, add to Americans' need for guaranteed lifetime income options through annuities. Today, there is a 50% chance that retirees will outlive their assets.

Neglect to Recognize Existing Consumer Protections. 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. (FINRA), a self-regulatory organization, which the SEC oversees, sets rules that govern the sales practices of broker-dealers.

Disproportionately Impact Middle-Income Savers. According to a 2013 Gallup survey, the median annual household income of individual annuity owners is $64,000. Therefore, middle-income savers continue to be negatively impacted by the proposed rule, with less access to information and education about securing guaranteed lifetime income.

KEY CONCERNS FOR SMALL BUSINESSES AND THEIR EMPLOYEES

Life insurers are leading providers of retirement security solutions for small businesses—representing 60% of the small plan marketplace. As the fastest growing segment of our economy, small businesses play an important role in helping American workers achieve retirement security. Policymakers should consider the following:

Small businesses are disproportionately harmed by the proposal. The proposal negatively impacts small plan formation by limiting sales activities that encourage small business owners (with 100 employees or less) to start up, maintain, or improve their employee benefit plans. This would impede the important policy goal of expanding small plan coverage.

Small businesses are key to the future of retirement security. According to the U.S. Chamber of Commerce, 99% of U.S. employers are small businesses, and they produce 63% of new private sector jobs. This regulation will affect how small businesses can offer 401ks and IRAs to their employees—impacting millions of Americans' retirement security.

Financial advisors play an important role in establishing workplace plans. A 2015 Oliver Wyman study shows that small businesses that work with a financial advisor are 50% more likely to set up a retirement plan (and micro businesses with 1-9 employees are almost twice as likely). These transactions are effectively eliminated by the new proposal.

MOVING FORWARD

American families are worried about saving enough for a retirement that could last 20 to 30 years. Policymakers should be seeking more ways to encourage families to plan ahead and businesses to offer retirement plans in the workplace.

Financial advisors, life insurance agents, and life insurance companies want to partner with the Administration and Congress to advance common-sense fixes for a more balanced fiduciary regulation. Any new regulation should uphold these key principles:

- Best Interest Standard: Advisors should act in the best interest of clients based on investment objectives, risk tolerance, and financial circumstances. The sale of proprietary products is not inconsistent with a client's best interest.
- Sales Clarification: Distinguish sales activities from fiduciary advice. Simply selling a product or service is not a fiduciary act.
- Improved Retirement Education: Continue to provide meaningful education and information about retirement savings and income options.
- Clear Disclosure: Provide clear, simple, and understandable disclosures regarding consumer costs.

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August 2015

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