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Testimony at the DOL Employee Benefits Security Administration Hearing on
"Retirement Security Rule: Definition of an Investment Advice Fiduciary"

Tuesday, December 12, 2023

Good morning. I'm Susan Neely, CEO of the American Council of Life Insurers.

Thank you for the opportunity to provide this testimony. I will begin with what I believe is a point of commonality. We all recognize there is a retirement savings gap in this country and we want to make sure consumers are supported with options and protections – to help our policy leaders close this gap and to help consumers live with certainty in retirement. It is in the spirit of that shared mission that we must express our grave concerns about the imprudent nature of this proposal.

The proposal is predicated on out-of-date data and a misfocused, incomplete regulatory impact analysis.

The proposal ignores the robust regulatory system implemented by the states and SEC.

The proposal seems at odds with action taken by Congress to close the retirement savings gap in part through expanded access to annuities.

Finally, implementation of this proposal will leave millions of retirees in an untenable financial situation in their most fragile years.

For these reasons, the proposal should be withdrawn.

Let me go through the facts. This fiduciary proposal is more expansive and harmful than the attempts in 2010 and 2016 to promulgate a similar regulation. Here are just a few of the many concerns and inaccuracies:

The proposal relies on stale data and an incomplete cost-benefit analysis, and curtails access to lifetime income products.

- The proposal's cost-benefit analysis has fatal flaws and misses the mark. It cites studies that disregard the purpose of annuities.

- The Department hasn't offered empirical data that indicates there is systemic harm to consumers or a need for this approach. This attempt to regulate sales speech is actually regulating consumer access to financial products.

- The proposal ignores the Fifth Circuit Court's opinion regarding the DOL's rulemaking authority, as well as Congressional intent.

- Most concerningly, the proposal does not regard how the rule will impact savings for low- and middle-income savers over the long term.

The proposal ignores the robust regulatory system implemented through significant changes over the past five years.

- The proposal focuses on conflicts of interest, but it doesn't recognize that the SEC's Regulation BI and the NAIC's Best Interest model deal with the same conflicts without limiting consumer access to guidance.

- The SEC Regulation Best Interest governs the recommendations of all those selling securities.

- The NAIC Best Interest standard requires a financial professional to act in the best interest of the consumer without placing his or her financial interest ahead of the consumer's interest. A financial professional must satisfy strong substantive obligations to meet the Best Interest standard. Commissioners can investigate company and agent practices, fine or penalize, revoke licensures, and refer for criminal investigations.

  Simultaneously, state insurance commissioners, state legislators, and governors in 41 states, irrespective of political affiliation, have adopted this Best Interest standard. These measures were purposefully harmonized with the SEC's Regulation Best Interest.

- 77.6% of U.S. consumers are now covered by enhanced consumer protections – without losing access to retirement options. By the end of next year, we expect coverage to be 100%. Together, the NAIC Best Interest model and SEC Regulation BI provide a robust consumer protection for Americans planning for retirement.

The proposal seems at odds with actions taken by Congress to close retirement savings gaps in part through expanded access to annuities.

- Congress has provided extraordinary bipartisan leadership to address these challenges, which resulted in two pieces of landmark legislation being signed into law by both the previous and current Presidents – legislation that included multiple provisions to expand access to protected lifetime income.

- The proposal skips over the long-term benefits of annuities, which can last 30 to 40 years, handling inflation, volatility, and downturns. It doesn't consider how this rule would impact a mutual fund owner compared to an annuity owner, over the long term.

The implementation of this proposal will leave millions of retirees in an untenable financial situation in their most fragile years.

Annuities are unlike any other financial product. They are a legally enforceable promise made by an insurance company to provide monthly income throughout a worker's retirement. And unlike other financial products, an annuity provides a guaranteed income for life.

For many Americans whose only savings is a 401(k) or IRA, they can turn those savings into a pension with an annuity. It provides a “set it and forget it” strategy that needs no further management, just like that of Social Security.

Annuities and mutual funds differ. With a mutual fund, the retiree assumes the risk. With an annuity, the risk shifts to the insurance company and it guarantees lifetime income. It is insurance.

A retirement can last for 30 years or more. But not just any 30 years – a very vulnerable 30 years, most of the time without substantial opportunities to earn a living. And in that period there are all kinds of shocks like financial crises and health crises. An annuity is designed for a retiree to weather those shocks. When you’re 80 years old, you don’t want to have to make choices between health and finances. An annuity makes those years consistent and protected.

With an option for protected lifetime income *and* a strong regulatory framework of consumer protections in place, it is no surprise that annuities are a product sought and used by middle-income Americans. The median household income among annuity owners is $76,000. The median household income in the U.S. is $63,000.

Annuities provide protection, security, and peace of mind.

It’s not surprising that people want this product. What IS surprising is a proposal so out of sync with this reality.

Here are the consequences people will face because of this rule.

Retirement savers will suffer. In 2024, the largest number of Americans in history will turn 65. And most Americans turning 65 do not have traditional pensions. They are self-funding their retirement through 401(k)s and other employer plans. Social Security provides a safety net, but for many it’s not enough to live comfortably in retirement. Congress understood this, which is why they made annuities more available through SECURE 1 and SECURE 2.

Communities of color will suffer. The financial savings gap is especially persistent among Black and Hispanic Americans.

One of the consequences of the racial wealth gap is that it also leads to a savings gap. The median retirement savings for Black and Hispanic households is less than $39,000.[1] Nearly two thirds of Hispanic families and more than half of Black families don’t have any form of retirement savings account.[2]

Given that fiduciary-only advisors often require account holders to make initial investments upwards of $100,000, it would exclude the vast majority of Black and Hispanic Americans from accessing the help they need to even begin to consider retirement savings products. This proposal would increase the wealth gap by reducing projected IRA balances of Black and Hispanic Americans by 20% over 10 years.[3] It builds a barrier to financial inclusion.

Middle income earners will suffer. If the 2016 fiduciary regulation remained in place, it would have reduced the projected accumulated retirements savings of 2.7 million individuals – American

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[1] https://www.fool.com/research/average-retirement-savings/
[2] Federal Reserve Survey of Consumer Finances, 2019.
[3] Quantria Strategies Study, November 8, 2021

workers with incomes below $100,000. By how much? $140 billion over 10 years.[4] Thankfully for them, it was struck down.

I will close how I started. This rule package undervalues the essential role annuities play in providing certainty for middle-income retirees. It turns a blind eye to the very real challenges retirees face and will create a scenario in which there are winners and losers in retirement.

It is out of sync with a collective, bipartisan mission to close retirement savings gaps for middle-income savers.

This is about the real lives of people, with real consequences and real impact.

Our ask is clear: remove this proposal in its entirety and focus instead on increasing access and certainty for American workers saving for retirement.

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[4] Quantria Strategies Study, November 8, 2021