

Sent: Tuesday, July 07, 2015 5:21 PM
To: EBSA, E-ORI - EBSA
Subject: Public Comment to the DOL proposed fiduciary rule

Dear Department of Labor,

I write to express my concern with the Department of Labor's proposed fiduciary rule (RIN 1210-AB32).

I am a financial services professional and feel the way the proposed rules are written will undermine the thousands of licensed Financial Advisors and Insurance Agents nationwide from effectively providing their clients with the best information possible about their financial future.

I do however support the DOL's goal in developing a best interest standard, the current proposal is unworkable. This proposal will impede the ability of savers to obtain lifetime income guarantees and to receive guidance from expert career agents about how to avoid outliving their savings. The lifetime income products that companies, like New York Life offer, help retirees replicate the private sector pensions that previous generations relied upon. No matter how long people may live, companies like NYL pay them a guaranteed income each month. That is income that middle class Americans can use to put back into the economy and help support them into their twilight year, without the need of relying on government assistance. Assistance that should be reserved for Americans who have no other avenues for help.

The guidance of professional licensed agents is crucial for savers who are making one of the most important financial decisions of their lives. Savers and retirees need more guidance, not less. Under this rule, to provide advice in the "best interest," the adviser must provide advice that: "Reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs of the retirement investor, without regard to the financial or other interest of the adviser, financial institution, any affiliate or other party."

PROBLEMS WITH PROPOSAL

The proposed rule would restrict access to such guidance and guarantees in several ways:

1. Could Effectively Prohibit Access to Top Quality Proprietary Products like Lifetime Income: The rule limits retirees' access to guidance and proprietary products, including New York Life's lifetime income guarantees. In contrast to the implications of DOL's proposal, the sale of New York Life products by a New York Life agent is not a "conflict of interest." Their agents have been trained to understand and explain their products. While the Department of Labor has long recognized the value of guaranteed income products and pursued policies to promote their use, this rule would have the opposite effect.

2. Limits Access for Low Balance Savers: The proposal will be particularly harmful to low balance savers, as the proposal implies that commission-based compensation is incompatible with a client's best interest. However, commissions are the most affordable way for low balance savers to pay for investment advice and access certain products. For example, commissions are the only compensation structure that is compatible with guaranteed lifetime income products, which are designed to spend down assets. Over the 10-15 year life of our lifetime income products, an agent's one-time upfront commission translates to about .25 - .5% annually, which is much more affordable than the typical 1% annual fee for managed accounts. If small savers are unable to access commission-based advice, they will be forced to move into more expensive advisory models or access a roboadvisor and lose access to personalized financial advice from a trained professional.

CHANGES ARE NEEDED

Because I support the concept of a best interest standard, I urge the Department of Labor to make the following changes to make the proposed rule workable for savers and retirees:

1. Explicitly and affirmatively clarify that the sale of proprietary products and receipt of differential compensation (e.g. commissions and health benefits) are consistent with the Impartial Conduct Standard required under the Best Interest Contract Exemption (BICE) and revised PTE 84-24.
2. Remove language creating an unworkable standard that threatens the sale of proprietary products by commissioned professionals. The proposed rule states that to qualify for the BICE and the Impartial Conducts Standard included in the revised PTE 84-24, the adviser must provide advice that is "without regard to the financial or other interest of the adviser, financial institution, any affiliate or other party." Removing this language and inserting language consistent with the existing ERISA duties of prudence and loyalty under Section 404, with its well-established, judicially sanctioned safe harbors, would help fix a key problem that makes the rule unworkable and creates a chilling effect on much needed retirement planning assistance and guaranteed income products for the middle class.
3. Provide clear guidance and examples regarding compliant sales practices involving proprietary products and differential compensation.

I urge the Department to re-write this unworkable rule to achieve the goal of helping American retirees achieve a secure retirement, rather than undermining that goal. As written, the rule significantly limits American retirees' access to expert, individualized guidance and to lifetime income guarantees.

Thank you for considering my comments.

Best Regards,

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