PUBLIC SUBMISSION

Received: April 17, 2017
Status: Pending_Post
Tracking No. 1k1-8vvo-3kwd
Comments Due: April 17, 2017
Submission Type: API

Docket: EBSA-2010-0050
Definition of the Term Fiduciary; Conflict of Interest Rule - Retirement Investment Advice; Best Interest Contract Exemption; etc.

Comment On: EBSA-2010-0050-3491
Definition of Term Fiduciary; Conflict of Interest Rule-Retirement Investment

Document: EBSA-2010-0050-DRAFT-18121
Comment on FR Doc # 2017-04096

Submitter Information

Name: Brent Meyer
Address: 17165 Kingfish Ln. W.
Summerland Key, FL, 33042
Email: brent@safemoney.com
Phone: 800-790-7791
Organization: Safe Money Resource

AAP Comment_April17

To: Department of Labor

VIA Online Link: https://www.federalregister.gov/documents/2017/03/02/2017-04096/definition-of-the-term-fiduciary-conflict-of-interest-rule-retirement-investment-advice-best#open-comment

Let's keep this simple. The Fiduciary Rule must be rescinded. 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.

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 was completely lacking in any 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 solely on mutual fund advice, the RIA did not even attempt to provide empirical evidence of the cost/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 fixed rate and fixed indexed **annuities today save between 35 and 75 cents on every dollar** that is paid to the insurance advisor versus the investment advisor.[1]

   Annuity advisors are paid a commission by the insurance company to cover, in part, the advisor's cost of doing business and providing services. The commission is one of many costs considered and factored into the product's design; including the guaranteed and the non-guaranteed benefits. One-hundred percent of the premium is put into the annuity and no deductions are made due to the payment of the commission.

   When complete, the quantitative analysis will demonstrate that the Rule's self-dealing to fee-based advisors and the complete disregard of the benefits and cost-efficiencies of commission-based annuity advisors, will deflate all the footballs for fee-based advisors. This unfair market advantage will limit advice options and cause consumers to pay more for advice - eroding already under-saved retirement accounts.

2. The immeasurable 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 between 25-50 basis points per dollar of premium for just the BIC supervision. Clearly demonstrating that the compliance costs assumed in the RIA are grossly underestimated at about 1 basis point

[1] Based on a typical 6.5% commission on a 10-year fixed annuity and life expectancy of 25-30 years as opposed to a conservative 1% annual investment management fee.

per savings dollar.[2] When you add in the costs of the financial advisor and the insurance company for administration, training and compliance, the costs are clearly an uninformed best guess.

An exhaustive study of the actual costs to adopt and administer the Rule will show the RIA estimates to be inadequate, will cost consumers much more and will far exceed any estimated benefits.

3. 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. In fact, insurance regulation is not ever mentioned on any page of the 250-page report.

   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 has already caused and will continue to cause disruptions and dislocations in the annuity marketplace that will adversely affects consumers.

4. 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 to merely read their 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, take action to help them save more safely or provide guaranteed lifetime income.

   The Department's piece-meal and bifurcated approach to a fiduciary standard of care is inappropriate and unnecessary for consumers purchasing annuity IRAs. The additional burdens placed on the consumer to understand and decide does not help Americans save.

The development of the standard of care should be in the hands of the officials who are charged with regulating the products, product manufacturers and product distributors. Regulators closest

[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 RIA estimated $17 trillion dollar marketplace.

to and with superior understanding of the marketplace is critical to ensure the President's mission "to empower Americans to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses, such as buying a home and paying for college, and to withstand unexpected financial emergencies."

Consumers need and deserve a comprehensive, coordinated and effective solution to a consumer-focused standard of care that covers advice given for 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 any updated economic and legal analysis will demonstrate that the Rule significantly alters Americans ability to choose the type of advice and the advisor from whom they receive financial 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.