

**Testimony of**  
**Edward Moslander, Senior Managing Director, TIAA-CREF**  
**as prepared for delivery**  
**before the**  
**Employee Benefits Security Administration**  
**United States Department of Labor**  
**August 12, 2015**

Ladies and Gentlemen, good morning.

I am grateful for this opportunity to share TIAA-CREF's views with the Department.

My name is Edward Moslander and I am a Senior Managing Director of TIAA-CREF, where I lead Institutional Client Services.

TIAA-CREF is the leading provider of retirement services in the not-for-profit and higher education markets and a global asset manager with more than \$869 billion in assets under management. We were founded nearly a century ago to operate on a not-for-profit basis, with the mission to "serve those who serve others" and "aid and strengthen" our client institutions.

For nearly 100 years, TIAA-CREF has helped our clients to and through retirement, and "Putting the Customer First" has remained a core value that defines the way we serve our retirement plan participants and IRA owners. TIAA-CREF strongly believes putting the customer first should be the industry standard.

To that end, we applaud the Department for undertaking this important project. *All* retirement savers must know that their financial institutions and advisors are putting the retirement saver's interests first.

Building on our strong collaborative working relationship with the Department, TIAA-CREF submitted a detailed comment letter outlining certain modifications to the Proposal – all requested to ensure our retirement plan participants and IRA owners continue to have access to the advice and educational resources that enable them to plan effectively for retirement.

In the brief time I have today, I would like to focus on two points in our letter.

First, I would like to underscore TIAA-CREF's agreement with the Department that individualized distribution advice – including whether to receive a lifetime income distribution from an annuity or roll over from an employer-sponsored plan to an IRA – should be subject to the very same fiduciary standard as all other advice. We do, however, offer some technical recommendations in this regard.

Second, I would like to highlight our concern with the Proposal's impact on the Department's goal of fostering lifetime income solutions.

Let's begin with distribution advice. As I mentioned earlier, acting in the client's best interest is a standard we always follow at TIAA-CREF, including in the distribution phase. The same best-interest standard ought to be the industry standard in all contexts.

As a provider that helps participants plan both to and through retirement, we have seen many participants are best served by keeping their assets within a plan. The advantages are many. For example:

1. Participants benefit from ERISA protections and can take comfort that their employer is required to engage in a robust process when designing the plan menu and choosing a plan provider.
2. Participants often benefit from institutional share class pricing, which generally keeps fees lower than retail shares.
3. Plans that choose TIAA-CREF can provide in-plan, built-in lifetime income features. This results in higher annuitization rates and improved retirement outcomes.
4. Participants often benefit from allocating money over time to fixed annuity contracts with interest crediting rates that can be dramatically higher than any new investment can offer.

To be sure, TIAA-CREF does not advocate for "one-size-fits-all" financial planning solutions. We agree that sometimes, rolling into an IRA will be in the participant's best interest. For instance, when a plan participant seeks a guaranteed lifetime income option but her plan lacks one, it may be appropriate for her to roll some or all of her plan balance into an IRA that enables her to purchase such an option.

But we have also seen situations where an adviser encourages a TIAA-CREF participant to roll over from a plan to an IRA without, for instance, understanding that the new investments have a much different risk and expense profile – such as a move from a guaranteed fixed annuity with a high interest-crediting rate to a long-term bond fund that carries low interest rates along with substantial principal risk, or from an institutional mutual fund share class into a retail one.

Many of our plan sponsors have expressed concern with these practices. Extending the same fiduciary framework to distribution advice could ensure each participant's best interest is being served to and through retirement.

We would, however, urge the Department to address technical issues with the proposal's implementation of the Best Interest standard.

Most critically, the education carve-out should expressly permit meaningful education about distribution options. Moreover, we believe that in all contexts, the fiduciary standard should apply only if investment advice is sufficiently individualized to form a reasonable basis for reliance by the advice recipient, and should be distinguished from ordinary marketing or selling activities. It is essential also for fiduciaries to be given reasonable mechanisms to render advice and receive customary compensation without running afoul of the prohibited transaction rules. Finally, we urge the Department to modify the best-interest contract exemption because, as proposed, it is unworkable and too expensive to implement. I would respectfully refer the Department to our letter for additional details.

Now, I'd like to turn now to the Proposal's impact on lifetime income products.

TIAA-CREF is a mission-driven company that seeks to provide those who serve others with the income they need in their retirement years. We do this through annuities, both fixed and variable, and mutual funds. Annuities are typically important for and in the best interest of our participants because they are a low-cost means for them to avoid outliving their retirement income. Every month, we write annuity checks to over 28,000 people over the age of 90. Our actuarial data underscore the critical importance of lifetime income. For a TIAA-CREF participant who is now age 65, there is a 50% likelihood of reaching age 89, and a 25% likelihood of reaching age 95. And if the participant is married, there is a 75% likelihood that at least once spouse will reach age 89, and a 44% chance that at least one spouse will reach age 95.

Given our mission, we are grateful that the Department has undertaken significant efforts in recent years to promote guaranteed lifetime income. But unintentionally, the Proposal risks doing just the opposite. Because annuities are complex, sometimes cost more than mutual funds due to their income level and lifetime income guarantees, and are often sold on a proprietary basis, we fear the Proposal will discourage the use of guaranteed lifetime income solutions.

The proposed education carve-out is so narrow it could curtail our ability to help plan participants and IRA owners understand how our annuity options work. The reality is that while mutual funds are well understood, annuities are not. For instance, a recent study our organization conducted found that while 61% of millennials are willing to participate in what amounts to an annuity, 72% are unfamiliar with annuity products.

Against this backdrop, the narrowness of the proposed education carve-out is very concerning. Under the carve-out, education does *not* include "advice or recommendations as to specific investment products, specific investment managers, or the value of particular securities or other property." Nor can education include model portfolios or asset allocation models that refer to specific investment products available under a plan – regardless of whether the provider includes a disclaimer stating that other investment alternatives are available.

Without the ability to discuss specific annuity options, it would be very difficult for us to provide participants and IRA owners with sufficient context to understand the benefits of annuity products that guarantee participants will never run out of money. Given the intricacies of such products, it is unrealistic to expect a participant, in a conversation with a worksite or call center representative, not to ask how a particular annuity works. A sufficiently broad education exemption is needed to ensure we can help participants and IRA owners fully understand these products.

The Proposal presents an even more fundamental threshold question for annuities, which is whether TIAA-CREF could even continue offering plan participants *our own* annuities. The Proposal's broad definition of "investment advice," the limited counterparty carve-out, the narrow definition of education, a "best interest" definition that departs from the settled approach used in ERISA, and the new limits proposed on various prohibited transaction exemptions – all taken together – raise major questions about TIAA-CREF's ability (or any annuity provider's ability for that matter) to sell proprietary products. TIAA-CREF only sells proprietary annuity products. These include the "in-plan" and individual annuity options through which we provide

plan participants and eligible IRA investors guaranteed lifetime income. But by inhibiting insurance companies from exclusively selling their own products, the Department would only decrease the availability of guaranteed lifetime income products.

To address these issues, we ask the Department to restore a robust education carve-out and make some important technical corrections, including confirming that selling proprietary annuity products can be consistent with the Best Interest standard and qualify for the revised prohibited transaction exemptions.

Thank you for the opportunity to testify and for your consideration. I would welcome any questions.

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