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**From:** Jessica R. Flores [mailto:jessica.flores@fiduciary-compliance.com]  
**Sent:** Monday, May 03, 2010 5:34 PM  
**To:** EBSA, E-ORI - EBSA  
**Cc:** kacie.sizemore@fiduciary-compliance.com  
**Subject:** RIN 1210-AB33

Please accept Fiduciary Compliance Center's submission of comments regarding the Lifetime Income RFI.

We encourage the Department to hold a hearing to examine these product strategies in more detail.

Thanks,



May 3, 2010

U.S. Department of Labor  
Employee Benefits Security Administration  
Public Disclosure Room  
200 Constitution Avenue, NW, Suite N-1513  
Washington, DC 20210

Dear Regulators,

In regards to the lifetime income solution, I would like to first state that I agree we need a solution to help ensure that retirement savings lasts through retirement and is not taken out and spent in the first couple years. I think that is an obvious fact that we can all agree on regardless of who we represent in this process.

That said however, is about all I agree on with the other industry experts on this subject. While in theory, just like most initiatives on behalf of the Department, this sounds like it is in the best interest of the majority of the American workers, the application of this solution will be where the problems hide. Let's not forget who is lobbying for this solution and who will ultimately manufacture such a product.

Most of my comments will focus on the questions 1, 2, 5, 11, 13, 17, and 20 posed in the RFI.

1. This is a great idea if it was structured in the sole interests of participants, which most products, especially the bundled offered by the very providers who have lobbied for this effort are not and are not required to be managed in the interests of participants.
2. Steps absolutely must be taken to protect participants from spending up their retirement, but the products should be manufactured independently in the sole interests of participants and should impose fiduciary status on those who manufacture them.
5. Let's hope that the industry is not successful in defaulting employer contributions there too. The litigation backlash would be enormous and if the Department protects fiduciaries from that backlash they will do so by selling out the interests of the participants.

11. We cannot become such a controlling government that we decide how folks spend their money, that thought is absurd. I think enforcing that some percentage is paid out over a de-cumulation phase and not in a lump sum makes sense, just do not define what vehicle that payout phase is invested in. By doing so you give all of the power to the industry powerhouses and accomplish exactly what they desire, guaranteed investments for the long term in their poorly managed products.
  
13. Below explains in detail my serious concerns over a mandatory option and who will really benefit from such a scheme:

The industry powerhouses and the lobbying industry associations who claim to represent the interests of 10's of millions of participants while in reality voice the desires of the folks that profit from the participants are the key drivers behind this initiative. They have sophisticated studies and reports to offer that have undoubtedly been prepared by incredibly bright people to swindle the Department into buying into this whole thing just like they did during the efforts to get the target date funds into the QDIA regulations. These companies that claim to save participants from themselves will do all they can as they have and continue to do to distract the Department from the obvious – they are self-serving organizations that use the money of hard-working Americans to make profits with no regard as to the effect on the participant's accounts. This is true now, has always been true and will always be true with the standards and protections we have blessed these organizations with receiving.

If you spend 2 minutes considering the obvious, do you really think this scheme is going to be the answer?

1. Didn't these same financial and investment experts manage the pension assets all of this time? And how is that working? They could not or arguably did not manage those assets to meet actuarial assumptions.
  
2. Didn't these same organizations manufacture, manage, make discretionary decisions for and then coerce the Department into a creative default scheme for a cute little product called "target date funds"? Were those funds not supposed to be "THE" answer for retirement accumulation? Did we assign any liability to those manufacturers who behaved as discretionary functional fiduciaries yet escaped the liability and were permitted to self-deal? And how did that work out? Well, being that most hid extremely aggressive fixed income strategies into an allocation that appeared conservative to most fiduciaries and participants with no repercussions for their inappropriate allocations leading to massive losses in 2008, I would say it didn't go so well.
  
3. And, let's not forget that this scheme has indeed already been created. What about fixed annuities? Why is this going to be any different than a fixed annuity? The insurance company earns a return in the market, credits the minimum amount they can get by with to contract holders and then keeps an undisclosed ridiculously excessive spread for themselves. This vehicle has obviously failed to adequately get savers where they need to be, so why are we now turning over this creative power to the same entities?

This effort is simply another scheme that will provide billions of dollars in revenue to the financial industry while providing minimal growth to investors. There will undeniably be conflicts of interest, self-dealing and minimal liability associated with the management of these vehicles.

If the Department continues to offer liability exemptions and relaxed fiduciary standards to the industry players as you have always done in the past, you can count on another major catastrophe like that of the target date funds. The good news is that this one will not be as evident nor as concentrated. Instead this one will occur over time when retirees are not experiencing reasonable growth in their accounts and therefore do not receive the same benefits they would if their accounts were invested solely in the interests of the retirees. Meanwhile, the financial institutions will earn billions over the course of these deals. Throw in a mandatory arrangement and you have guaranteed their future earnings, great news for the shareholders of these institutions.

When will the day arrive when our government stops the bleeding of investor savings and regulates the institutions that manage this money? Why are institutions set up to profit from investor savings in their own interests with no accountability for ignoring the investors' interests? What we are contemplating under this scenario is to stick a mandatory IV in the arms of every retiree to siphon significant blood flow which will be handed over to massive corporations that will sell shares of this blood to their own shareholders. Their goal is to siphon as much blood as possible for their shareholders and absolutely not to make certain the retiree retains what they deserve to maintain the quality of life they worked so hard to accumulate.

I must hand it to them, this is a good sham. Default everyone into a target date scheme that makes billions of dollars for the industry, then when they are done sucking that dry, roll the accounts into an income scheme that will ensure they make billions more with no regard for the investor. If this becomes mandatory, I would expect to see an outcry from the American public and they may just stop funding their 401k plans altogether as their money would do better under their mattresses.

This is a scheme being sold to the Obama administration and nothing at all more than that! This is not the first one or the last and by allowing this you are selling out the retirement savings of the very people the Department was formed to protect. The industry regulation efforts must change and change drastically before this should be even be considered. Do not be fooled by the studies and reports, just chase the buck and you will always find the motive behind such a scheme like this lifetime income product.

17. No matter what you provide to participants, they will always be the underdog in this scheme. The industry knows how to overcomplicate disclosures and distract investors away from critical information so they can continue with business as usual. Fiduciaries routinely fail to disseminate the information overload to make good decisions for their plans, you cannot expect participants to be able to do this. No instead, why doesn't the Department focus on proper regulations, liability and standards of care and loyalty which should be enforced and monitored at the

regulatory level and not be passed off to fiduciaries and participants who are always behind the curve on the industry's games.

20. Again, it goes back to question 17, educate away, you will get no where, lead to more confusion and simply continue to give the power to the industry. It's time for the regulatory agencies that are funded by taxpayers and fines to do your jobs and regulate. You need to hire industry insiders and experts in the areas of fraud and willful omissions. Forget trying to educate the common man on how to make sure he's not being fed misrepresented information. And that does not mean, like the Department was convinced in the QDIA scheme, that the industry should take over without liability as you have allowed. Instead, it means service providers manufacturing these schemes should carry the most extensive liability far beyond that assigned to fiduciaries who have no idea about how the business actually works. Assign the liability to those who are the experts and hold the power and discretion, I guess I continually fail to see why the Department has yet acknowledge this very basic idea.

Please tread slowly and please do not continue to be distracted by impressive charts and studies. And do not for one minute believe that some industry association in any way represents the American workers because those are not the voices lobbying behind the scenes. The biggest contributors and most active members of any industry association is very simply the industry powerhouses and those voices are very talented in the art of selling what is best for participants to the Department, meanwhile acting always in their own interests. Put the interests of the participants first and stop putting up with these conflicts of interest and self-dealing arrangements.

Good luck with this adventure!

Respectfully submitted by,

Jessica R. Flores  
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Fiduciary Compliance Center, LLC