



Financial Security...for Life.

**DIRK KEMPTHORNE**  
*President & Chief Executive Officer*

May 1, 2017

The Honorable R. Alexander Acosta  
Secretary of Labor  
United States Department of Labor  
200 Constitution Avenue N.W.  
Washington, DC 20210

Dear Secretary Acosta:

On behalf of the American Council of Life Insurers (ACLI), I congratulate you on your confirmation as the nation's 27<sup>th</sup> Secretary of Labor. I very much look forward to working closely with you and your Department's colleagues throughout your tenure.

I write to you on an urgent matter in which our industry has been intimately involved with for numerous years. As discussed further below, to protect American retirement savers, I urge you to take immediate action to delay – in its entirety – the Department's fiduciary regulation until the Department of Labor has completed its examination of the fiduciary regulation and is consistent with the directive contained in the President's February 3, 2017 Memorandum.

Although the Department acted to delay the regulation's April 10, 2017 applicability date, the Department's approach to the delay, and its approach to the examination required by the President is deeply flawed. Before your confirmation, the Department favored delaying implementation to conduct a careful and thoughtful review; this review is likely to take more time than the 60-day extension affords. Yet, the Department intends to implement on June 9, 2017 key aspects of the fiduciary regulation, including its so-called "Impartial Conduct Standards."

The Department's approach to the delay does not demonstrate a clear and concerted effort to comply with the Presidential Memorandum, and indeed, appears inherently inconsistent with its directives. By implementing the regulation's "Impartial Conduct Standards," it appears the Department has already determined that maintaining these standards is consistent with the Presidential Memorandum. ACLI strongly disagrees with the Department's unsubstantiated conclusion that the impartial Conduct Standards are among the "least controversial" aspects of the rulemaking project. In fact, significant and meaningful challenges to aspects of the Impartial Conduct Standards have been raised in comment letters, in testimony during the Department's hearings on the proposed regulation and exemptions, and in litigation challenging the regulation. The Department's approach is inconsistent with the Presidential Memorandum and is harmful to consumers and the businesses providing services to them.

ACLI supports reasonable and appropriately tailored rules that require all sales professionals to act in the best interest of their customers regardless of whether they serve as fiduciaries under ERISA. But, this regulation does not do that and is having a harmful impact on consumers. It violates the First Amendment by imposing significant content-based and discriminatory burdens on commercial speech, thus abridging consumers' rights to receive truthful, non-misleading information about annuities.

The regulation fails to provide workable exemptions for the insurance industry. Its bias against commission-based arrangements harms "buy and hold" investors, like those seeking guaranteed lifetime income, and seriously disrupts the small-retirement plan and IRA marketplace.

This regulation is creating an advice gap for small and medium retirement account holders, as service providers abandon these accounts, and as documented in numerous recent press articles. Without substantiation, the Department's rules rely on computer-generated asset allocation platforms (a.k.a. Robo-Advisers) as the option for small investors who lose access to financial assistance.

This regulation will increase litigation and costs to service providers and consumers. This is due to the ambiguous impartial conduct standards, which render compliance uncertain and unworkable, and the Best Interest Contract Exemption's private right of action used by the Department as an enforcement tool.

The regulation's highly burdensome and paternalistic approach effectively substitutes the judgment (and bias) of the Department for the judgment of individual investors. Rather than empowering plan fiduciaries, plan participants and beneficiaries, and IRA investors, this regulation limits sales engagements, constrains retirement investment education, constrains retirement savings roll over conversations, and limits the choices of products and services available to retirement savers, especially for IRA investors.

Given the significant harm that this regulation will have on American retirement savers, I urge you to delay the regulation - in its entirety - until the Department completes a thorough and impartial examination, in accordance with the President's directive. Based on both the observed and anticipated effects of this regulation on consumers as described in our April 17<sup>th</sup> letter to the Department, this regulation is inconsistent with the policies of the Administration. It significantly impedes the ability of Americans to receive financial advice, make their own financial decisions and save for retirement.

Sincerely,



GOVERNOR DIRK KEMPTHORNE

PS - I had the honor to serve President George W. Bush as Secretary of the Interior and would be pleased to share with you my experiences and help you during your transition.

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<sup>1</sup> The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with 290 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 94 percent of industry assets, 93 percent of life insurance premiums, and 97 percent of annuity considerations in the United States. ACLI member companies offer insurance contracts and other investment products and services to qualified retirement plans, including defined benefit pension and 401(k) arrangements, and to individuals through individual retirement arrangements (IRAs) or on a non-qualified basis. ACLI member companies also are employer sponsors of retirement plans for their own employees.

*Congratulations, Mr. Secretary!*