



September 24, 2015

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Conflicts of Interest Rule
U.S. Department of Labor
200 Constitution Avenue NW, Room N-5655
Washington D.C. 20210

Re: Comments on Department of Labor Proposed Redefinition of "Fiduciary" (RIN 1210-AB32); Proposed Best Interest Contract Exemption (ZRIN 1210-ZA25); and Proposed Amendment to Prohibited Transaction Class Exemption 84-24 (ZRIN 1210-ZA25)

Dear Sir or Madam:

The Association for Advanced Life Underwriting ("AALU") appreciates the opportunity to provide additional comments to the Department of Labor ("Department" or "DOL") in response to the above-referenced proposed rule ("Rule" or "Proposal") to redefine who is a fiduciary of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA) and Section 4975 of the Internal Revenue Code of 1986, including individual retirement accounts (IRAs).

AALU is the leading organization of life insurance professionals who are a trusted voice on policy issues impacting Americans' financial security and retirement savings. Our 2,200 members are primarily engaged in sales of life insurance used as part of retirement, estate, charitable, and deferred compensation and employment benefit services.

We thank the DOL for the opportunity to testify at the Department's public hearing on its proposed fiduciary rule held August 10-13, and offer the following comments to supplement our previous submission. We do not address all of our concerns about the Proposal, but rather focuses on post-hearing market volatility to highlight the value of the type of professional advice that this Rule will make difficult to provide.

- Professional Financial Advisors Help Retirement Savers Avoid Major Mistakes

Since the Department concluded its public hearing, we've seen significant market volatility that highlights the value of professional financial advice. Just days after the hearing was concluded, the stock market experienced wild swings that were widely reported in the media. In fact, from August 17th to August 24th, the Dow Jones Industrial Average lost over 12% of its value, before eventually gaining back almost 9% of its value by September 16th—with ups and downs along the way.ⁱ When stock markets lose significant value in a short amount of time, unsophisticated investors are tempted to panic and sell immediately.

This natural tendency to lock-in losses by selling stocks or other assets when markets take a nosedive is amplified by newspaper headlines and the constant buzz of financial news on cable television. For example, the New York Times had the following headline on August 20th, “Big Slump for the Market as Concerns Over China Increase”, and on the next day had “Daily Report: The Stock Market Carnage Cometh for Tech.”ⁱⁱ Headlines like these are hard to ignore for many retirement savers, not to mention the impact of channels like CNBC updating a falling market in real time.

It is in this environment where professional advice is essential. While the Department has focused on fees and their effect on retirement savings, the decision to stay invested in the market during times of stress is the biggest factor affecting retirement savings over the long-term. Advisors develop personal relationships with retirement savers, and keep them from making decisions that will negatively impact their retirement savings. They encourage individuals to stick with the long-term plans they have created together, and avoid mistakes such as selling assets based on short-term market movements. We’ve heard from our members that they help consumers avoid making decisions that would adversely affect their retirement savings every day, including during this recent market downturn. In fact, according to a recent analysis from Robert Litan and Hal Singer, restricting access to face-to-face professional advice during a future market swoon could cost investors \$80 billion.ⁱⁱⁱ

- Individualized Advice Is Particularly Important for Average Savers

The restrictions in the Department’s proposal will prevent advisors from providing the same level of individualized advice to retirement savers, if they are able to provide any service at all. This is especially harmful for average retirement savers, because having an individualized retirement savings plan is particularly critical for this group.

For example, In 2011 the Government Accountability Office (GAO) released a study at the request of Congress entitled “Retirement Income: Ensuring Income throughout Retirement Requires Difficult Choices,” which noted that with the steep decline in defined benefit pension plans and the rise of defined contribution plans, individuals are increasingly faced with difficult decisions about managing their financial assets to secure lifetime income.

While of course noting that increasing savings and investing wisely are crucial to achieving sufficient retirement income—in addition to the importance of annuities--the report stresses the benefits of delaying the receipt of social security and working longer. Further, the GAO study makes clear that the decision to delay the receipt of social security is a crucial factor in the retirement security equation. Working longer and taking social security at a later age can result in significantly more income in retirement.

The study also clearly indicates that access to professional financial advice is critical. It’s not just instructing individuals about the increased savings that delayed receipt of social security can bring—making the optimal choice requires education and calculations that are tailored to each retiree’s unique circumstances, including anticipated expenses, income level, health status, and risk tolerance. Given that one-third of retirees obtain 90% of their income from social security this type of advice is particularly essential.^{iv}

Of course, average savers don’t just need individualized advice about social security. A study by First Command explains that average retirement savers need more assistance with debt management, risk management, creating contingency funds, and distributing funds in retirement. In particular, average

retirement savers need extra attention to budgeting, including reducing expenses and navigating needs versus wants to ensure adequate retirement savings for life.^v

Professional financial advisors can guide individuals through their various options and construct a personalized plan that will provide sufficient income in retirement. Unfortunately, this rule would make providing this type of advice significantly harder, if not impossible.

- Robo-Advice Can't Offer Same Level of Service

While life insurance agents and other financial professionals will be forced to significantly cut back on the products and services they can provide to average retirement savers, it is unlikely that other advisors will emerge to serve those customers. This is because registered investment advisors receiving flat fees don't typically serve small accounts—where investment returns cannot support the flat fee—but rather focus on wealthier clients who can afford the fees.

Given previous Department comments, it seems that the DOL and other supporters of this proposed fiduciary rule consider robo-advisors to be an adequate substitute for professional financial advice from an advisor. However, robo-advisors simply cannot replace the value that is provided by life insurance and financial professionals. Rather, online advice is based on algorithms offering limited services that provide a fraction of the retirement planning services provided by professional advisors. They are ill-equipped to tailor recommendations to meet individual retirement savers, or to keep them from making mistakes that can devastate a nest egg.^{vi}

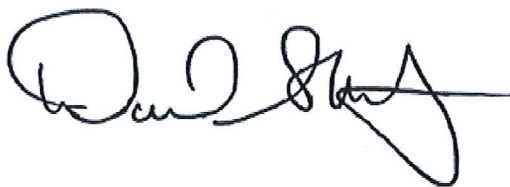
A recent survey by the American College of Financial Services found that individuals from ages 60-75 have low levels of retirement income literacy. Out of 38 questions, the average individual answered just 42% of them correctly—and less than one out of five got at least 60% correct—demonstrating the danger of leaving many retirement savers and retirees without access to professional financial advice.^{vii}

In short, the Department is making an enormous gamble with the retirement savings of many Americans by assuming that robo-advisors can offer the same level of service as a life insurance professional or financial advisor.

- Summary

The recent volatility in the stock market, which saw significant drops in the value of the stock market, provides an excellent case study to highlight a core value of professional financial advice. Unsophisticated investors often make decisions that can negatively impact their savings, and selling stocks or other assets during a downturn is a common mistake without receiving guidance. Robo-advisors may be offer some assistance with portfolio allocation based on general risk factors and goals, but cannot replace the individualized attention and critical counsel that professional advisors offer—particularly when it comes to preventing retirement savers from making detrimental decisions. Episodes like the August market swoon should give the Department great pause before going forward with its Proposal.

Sincerely,



David J. Stertz
Chief Executive Officer
AALU

ⁱ “Dow Jones Industrial Average: Historical Numbers,” Yahoo. Accessed September 24, 2015. Available at: <http://finance.yahoo.com/q/hp?s=%5EDJI&a=06&b=15&c=2015&d=08&e=15&f=2015&g=d>

ⁱⁱ The Associated Press, “Big Slump for the Market as Concerns Over China Increase,” *New York Times*, August 20, 2015. Accessed September 24, 2015. Available at: http://www.nytimes.com/2015/08/21/business/daily-stock-market-activity.html?_r=0 AND Pui-Wing Tam, “Daily Report: The Stock Market Carnage Cometh for Tech,” *New York Times*, August 21, 2015. Accessed September 24, 2015. Available at: <http://bits.blogs.nytimes.com/2015/08/21/daily-report-the-stock-market-carnage-cometh-for-tech/>

ⁱⁱⁱ Robert Litan and Hal Singer, “Good Intentions Gone Wrong: The Yet-To-Be-Recognized Costs of the Department Of Labor’s Proposed Fiduciary Rule,” Economists Incorporated, July 2015. Accessed: August 11, 2015. Available at: <http://www.dol.gov/ebsa/pdf/1210-ZA25-00070.pdf>.

^{iv} Terrance K. Martin Jr. and Michael Finke, “A Comparison of Retirement Strategies and Financial Planner Value,” *Journal of Financial Planning*, November 2014.

^v Nathaniel Harness, Swarn Chatterjee, and John Salter, “Financial Planning for the Middle Market,” *Journal of Financial Planning*, April 2014.

^{vi} Dan Moisand, "Why robo-advisers are a problem for the profession," *Journal of Financial Planning*, *Journal of Financial Planning*, July 2014.

^{vii} Robert R. Johnson, "Analysis: Regulators Selling Advisors Short," *Financial Planner*, April 27, 2015. Accessed September 24, 2015. Available at:
<http://www.financial-planning.com/blogs/analysis-regulators-selling-advisors-short-2692650-1.html>.