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Department of Labor

RE: Uniform Fiduciary Rule

I'm writing today in opposition to the DOL's proposed uniform fiduciary standard. I believe there needs to be an exemption for fixed life insurance products, especially fixed annuities. An easy way to understand the harm this rule will bring to consumers is illustrated in the real world example I cite below. This example compares the efficient, well regulated sales process currently in effect to the convoluted process that will result from the proposed DOL rule, a rule that will make it much more difficult for middle-class Americans to obtain advice in purchasing a product that should be a critical part of their retirement plan.

Current Sales Process: A 70 year-old female potential customer is referred to one of our insurance agents to discuss the merits of a fixed annuity. She has $50,000 and does not want any risk. After **completing a thorough suitability review, our agent determines that a fixed annuity paying 3.50% is best** for her. She purchases the annuity and is happy because her money is safe, she has adequate liquidity and <u>she is earning three times what she would have earned in a bank CD.</u> She refers several clients to our agent in the future. Total commissions paid to the agent and the Independent Marketing Organization distributing the product equal 4.0%, but this does not come from the customer; her account opens with $50,000 on day one and the commissions are factored in to the equation when the insurance company determines the 3.50% rate. **Result – she earns 3.50%.**

Sales Process after the DOL Rule is implemented: The same potential customer does not become a client because she objects to several components of the fiduciary sales transaction. She does not want to pay a $2000 – $3000 planning fee, the amount typically charged by most fee-only planners. She does not want a complete financial plan, but rather simply wants to find a safe home for this $50,000. She also does not want to pay an ongoing 1.0% – 3.0% fee to put this $50,000 "under management". If she does become a client and buys the annuity and the upfront planning fee is waived she pays, at a minimum, 1% per year for the rest of her life. After four short years <u>she is stuck paying higher fees</u> for life (remember the total commissions paid under the current model total 4.0% for the life of the contract). These higher fees hurt the client. **Result – she buys the annuity but earns 1% less each year for the life of the contract or she decides to stay at the bank and earns 1% instead of 3.50%.**

Under the proposed commission disclosure she may get "cold feet" when she sees the $2,000 price tag and decide to delay the purchase, and might remain at the bank earning 1% or less for a long period of time. While commission disclosures seem like a great idea, they can work against the client if the client (incorrectly) deems them to be "too high". At first glance $2000 may seem like "too much commission", but the reality is this is a reasonable amount of compensation given the unique skill set required to be a successful agent; to be successful in agent must be likable, trustworthy, knowledgeable and extremely hard-working. This rare combination of skills warrants the $2000 commission, perhaps even more.

Other Concerns with the proposed rule:

Increased Liability for the agent and the insurance company. Experienced agents may retire early, deciding that an additional layer of regulation, cost and liability on top of the existing framework might tip the scale in favor of early retirement. Insurance companies manufacturing the fixed annuity products may decide there's too much tail risk from class-action lawsuits and may exit the market entirely. It is already difficult for them to make profits in this low interest rate environment which has persisted for quite some time. Numerous carriers have left the market due to low profitability. This rule will make more carriers consider dropping out of the market. How can an agent working for a career company (Northwestern Mutual, Mass Mutual, New York Life etc) possibly act as a fiduciary and claim to offer products from all sources when in reality they sell primarily product from their primary company? **Result – fewer agents and fewer insurance companies offering product.**

Increased Reporting Costs: Even the large RIA's think the rule will be too costly to implement.

Dodd-Frank has mandated the SEC address this issue.

Treating upfront commissions as a "bad" thing is not accurate: In addition to harming the client directly with higher fees, forcing trail commissions on the existing, mostly upfront commission-based distribution channel will make it very difficult for new insurance agents to survive. A very small percentage of agents entering the field will succeed and make it a career under the current system – the percentage of agents who survive is approximately 5%. If upfront commissions are discouraged new agents will have a difficult time generating the revenue needed in the early years of their careers. A quick review of a mutual fund prospectus shows that A shares (commissions paid by the client upfront) are cheaper in the long run than C shares or B shares.

Finally, this proposed rule completely ignores the fact that commissions are already as low as they can possibly be. Insurance companies automatically pay the lowest possible commission on each transaction in order to maximize profits; If they could attract premium dollars for zero commission they would do so – it would be the ideal situation. The free market automatically ensures that commissions will be no higher than necessary to attract the desired premium. What makes a regulator think they are better suited to determine a "reasonable" commission than a marketplace which judges millions upon millions of transactions, one at a time, constantly making sure the commission is just enough to get the premium in the door?

I sincerely hope the DOL reconsiders implementation of this harmful rule. Advisors will not be able to afford meeting with clients who have less than $250,000. In the United Kingdom, a country specifically listed in the proposed rule as a "success story", the major insurance company Aviva now has an $800,000 minimum requirement to meet and advisor face-to-face. This rule will harm the middle class and an entire distribution system comprised of good intention, hard-working Americans.

Rosemary Tomassi

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