AMERICANS FOR ANNUITY PROTECTION
Advocacy in Action. Prosperity for All.

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Vice Chairman & CEO
August 7, 2017

Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Via Email to EBSA.FiduciaryRuleExamination@dol.gov

To the Department of Labor:

RE: RIN 1210-AB79 DOL Conflict of Interest - Fiduciary Rule
Comments in Support of 60-Day Delay in Applicability Date of Fiduciary Rule, Employee Benefits Security Administration, RIN 1210-AB79 (82 Fed. Reg.12319, March 2, 2017) ("NPRM of March 2, 2017")

Americans for Annuity Protection (AAP) strongly supports the U.S. Department of Labor proposal to delay the DOL Fiduciary Rule applicability date of the final rule titled "Definition of the Term 'Fiduciary;' Conflict of Interest Rule--Retirement Advice" published in the Federal Register on April 8, 2016.

AAP submits these comments to address the proposed delay of the effective date and additional questions that affect annuities outlined in the RFI issued by the Department on July 6, 2017. We wholeheartedly support a best interest standard of care for financial and insurance professionals that puts clients' interests first. But there are many corrections that need to be made and research to be completed before we can be sure Americans will not be harmed when the Rule's full provisions take effect next year.

(AAP) hears from annuity professionals regularly and they share consumer concerns about having less product choice and more expensive advice under the Rule as written. A little over a year ago and again in March of this year over 2500 consumers signed our petitions expressing their concerns about the conflicting, complex and incompatible requirements imposed on annuities and the confusion they create in the marketplace. This confusion has already been met with indecision and postponement of saving decisions and activities. With today's crisis in retirement preparedness, delaying savings and retirement decisions does not help Americans save, nor does it advance the President's priority "to empower Americans to make their own financial decisions."

INDUSTRY INNOVATION

Since the June 9, 2017 start date of the "transitional" Rule, annuity and life insurance professionals have been working under the Impartial Conduct Standards (herein referred to as the Standards) for qualified annuity recommendations. These standards were not adopted without disruption as seen by many advisors choosing to retire early or change their business models away from qualified annuities.

Positively however, increased awareness of the best interest standards by consumers has led to the advent of compliance systems and software platforms to help advisors adhere to the standards and review product availability and solutions that will better address their client's needs, planning

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horizon and risk tolerance. These systems are innovative and competitive to allow advisors to choose the system that fits best with their business models. They also provide a solid platform over which the recommendations may be audited and supervised for compliance with the Standards.

The industry has also developed various training and education programs to help advisors understand the fiduciary duty and the Standards' requirements. Many of these programs can be taken without cost to the advisor; making it affordable and easier to transition from the state laws requiring adherence to the suitability standard to a fiduciary duty that incorporates suitability and the new 84-24 disclosure requirements of the Rule.

In addition, many insurance companies have added a statement requirement from the advisor warranting he or she has complied with The Standards. These innovations and new requirements allow the advisor to more seamlessly transition to the Standards.

Unfortunately, unless the Rule is further delayed these market innovations and consumer protections will have to be completely altered and in some cases aborted because of the differing Best Interest Contract Exemption's contract and disclosure requirements and PTE 84-24 disclosure requirements. It is no surprise the expense to develop new market innovations to comply with the Rule will be considerable and the expense already incurred unrecoverable.

CONSUMER CONFUSION CAUSED BY UNEQUAL TREATMENT UNDER THE RULE

The lack of uniformity the Rule establishes between qualified funds and nonqualified funds is confusing to most consumers who hold both types of assets. When considering a recommendation using a mixture of assets or even when determining which asset type should fund a recommendation, consumers will be inundated with pages upon pages of often disparate and confusing disclosures.

Fueling consumer confusion, the Rule has one PTE (84-24) for fixed rate and a second PTE (BICE) for fixed indexed annuities even though under state insurance law fixed indexed annuities (FIAs) are regulated like every other type of fixed annuity and under federal securities law FIAs are treated like every other fixed annuity and are exempt from registration under section 3(a) (8) of the Securities Act of 1933 as a state-regulated insurance product. Most recently, Congress in section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111- 203) reaffirmed that under federal securities law FIAs are like every other fixed annuity product.

Moving them arbitrarily from the 84-24 Exemption to the Best Interest Contract Exemption (BICE) and without any substantive empirical analysis defies the rule of law at both the state and federal levels.

A recommendation often includes different types of fixed annuities to provide a guaranteed insurance solution for retirement savings. Under the disparate and confusing disclosures required by 84-24 and BIC exemptions, consumers will be over-whelmed trying to compare savings alternatives funded by qualified assets or non-qualified assets using fixed rate or fixed indexed annuities. Therefore, it is a certainty the Rule and PTEs do not appropriately balance the interests of consumers in receiving broad-based retirement advice while protecting them from conflicts of interest?

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MITIGATING CONFLICT OF INTEREST USING THE ANNUITY COMMISSION MODEL

The Department's RFI offers many questions related to incentivization and how to mitigate conflicts of interest. Unfortunately, the inherent bias of the Rule against commissions in favor of fee-only advice is born of a lack of understanding of the commission-based model and its benefit to consumers.

The insurance industry, including annuities, has a 150-year history of paying commissions to advisors and agents to provide insurance advice in all forms - property, life, long term care and retirement insurance - and to make insurance recommendations. The conclusion from customer satisfaction studies and complaint reports demonstrates that commission-based insurance advice is serving consumers' interest best.

As experienced annuity product developers and members of the academia, we know that the commission-based payment model is one of, if not the, most cost-effective for the consumer and, in turn, provides the best value proposition. Commission-based models are inherently less expensive to maintain and, therefore, more beneficial to consumers. Because commissions are determined by production, the commission expense cost is shared by all consumers who purchase the specific annuity product thereby reducing overall expense for each consumer.

Conversely, under fee-based payment models each consumer bears the cost individually, adding increased cost and out-of-pocket expense to the consumer. Compounding the expense in the level-fee model is the problem that the consumer pays each and every year for life; whereas, in the commission-based model the advisor is typically paid a commission only once for the life of the annuity contract.

The ongoing fees taken directly from the consumer's savings rather than being paid indirectly by the insurance company can add up to significant loss of savings potential over time. The value of compounding the initial premium year after year is lost in fee-based models and has a detrimental impact on consumer savings

The total all-in cost to manage a portfolio typically includes the AUM fee, the underlying product costs of ETFs and mutual funds, transaction costs, and various platform fees. A recent financial advisor fee study from Bob Veres' Inside Information reveals that the true all-in cost averages about 1.65%.

Another study of over 121 small business 401(k) plans (under 2 million in assets) by Employee Fiduciary last year reports that the average "all-in" fee is 2.22%. While the employer may pay some of these fees, the Department itself suggests in A Look At 401k Plan Fees that the majority of the cost are paid by the employee and are either taken from investment returns (reducing the return in your personal account) or directly from the employee's savings.

This Chart shows the actual reduction in the consumer's retirement savings resulting from fee-based paid year after year is considerable. We assumed the account value begins at $35,000 with an "average" 1.5% management fee for the investment. The assumed annuity commission paid is a typical 6.5% commission on a 10-year product or $2,275. We assumed a conservative investment portfolio would earn 6% a year and the annuity 5%.

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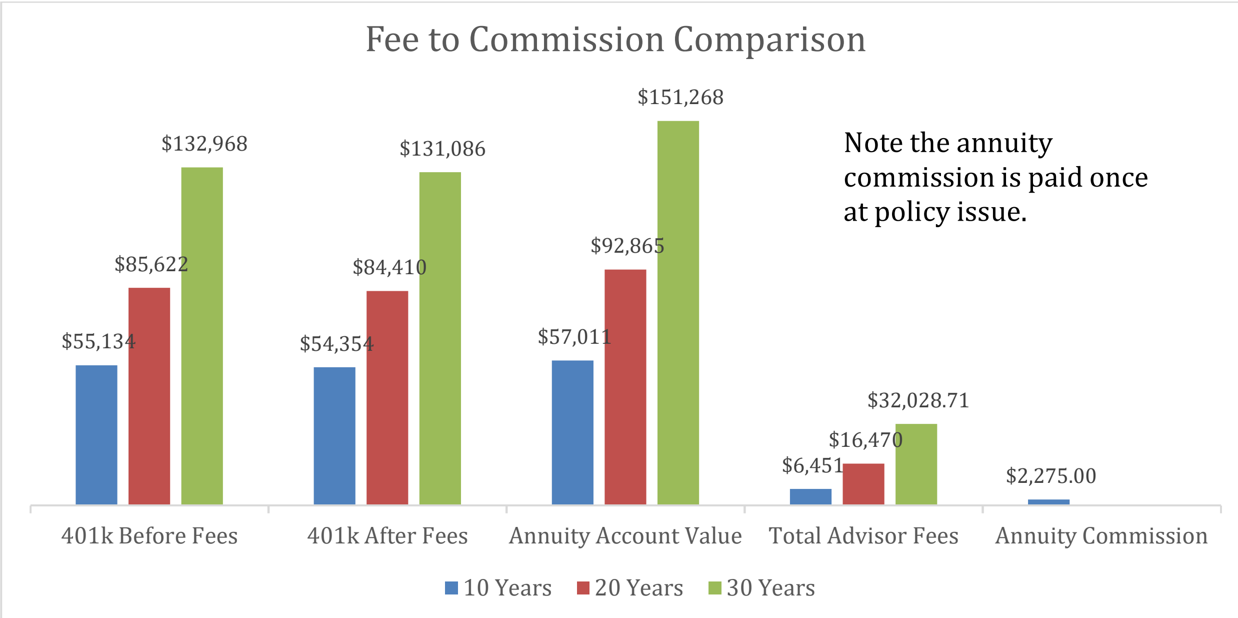

FIXED ANNUITIES SHOULD BE SUBJECT TO THE 84-24 PTE

The existing transitional 84-24 requirement to disclose conflicts of interest including compensation provides transparency of the transaction for consumers and is an important safeguard. In contrast, the liability caused by increased legal exposure under the BICE with its new private right of action is real, significant and ultimately detrimental to the consumer.   Class actions often take years to reach a settlement, and even when they do, the parties have legal-expense recovery incentives to structure settlement terms that make it difficult for class members to obtain substantive relief.

Arbitration, on the other hand, is typically a cheaper, faster and more effective means for consumers to settle disputes and consumers generally benefit from the ability to opt for individual arbitration over class actions. However, with fixed annuities, arbitration is rarely necessary because the structure for dispute resolution usually is taken up by the state insurance department and the insurance company and/or advisor – saving time and money for the annuity consumer. In addition, the charged party or parties are incentivized to agree to a mutually beneficial solution to avoid lengthy and costly legal action.

A conclusive report of annuity satisfaction by the NAIC (available at www.naic.org) shows that the number of closed complaints in the “annuities” category has fallen over 40% since 2010 (the year the Suitability in Annuity Transactions Model was introduced). FINRA also tallies “arbitration cases” filed. Arbitration cases are a measure of complaint activity for a variety of securities products, including variable annuities. The FINRA data shows that in 2013 variable annuity arbitration cases were down 40 percent from 2009.   Between the two reports, the total number of complaints from consumers saving almost $2.5 trillion in annuity assets[1] was about 500.

The rarity of complaints makes it imperative to conclude that the existing insurance business model is

[1] Source: Morningstar and LIMRA Report on Annuity Net Assets.

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serving the best interests of the consumer and that it creates a best interest incentive between the the advisor and the the plan participant or IRA owner.

The BICE and its private right of action creates an uneven playing field between commissioned and level-fee professionals as well as between fixed indexed annuity and other types of fixed annuities. The Department should eliminate the contract requirement of the BICE, therefore eliminating the private right of action.

APPROPRIATE REGULATION BY THE BEST-PROTECTING REGULATOR

Americans for Annuity Protection supports Secretary Acosta's acknowledgement that additional regulatory expertise, such as that possessed by the SEC in regulating the securities industry, will need to be used to achieve uniform standard across all fund types recommended by security professionals.

However, fixed annuities and insurance professionals continue to be successfully supervised by state insurance departments and annuities enjoy an unprecedented 98.8% satisfaction rate because of the robust and effective enforcement of insurance laws by state insurance departments. The NAIC is currently working on amending their existing Suitability in Annuity Transactions Model Law to incorporate a best interest standard. AAP urges the Secretary to consider calling upon the NAIC to tap their expertise in regulating the insurance industry including product manufacturers, the products and the professionals, like me, who sell them.

Utilizing the specialized expertise of the SEC for security products and professionals in coordination with the NAIC for insurance products and professionals will best leverage the Department of Labor's work on this issue. Further, it will be helpful to both advisers and more importantly consumers to promulgate a new higher standard of care for all financial products and services **but** regulated by the agencies with a history of effective enforcement that protects consumers. Therefore, we strongly urge the Secretary to constructively engage the SEC and NAIC to ensure development of uniform and workable best interest standards that are enforced by the government agency who is the most effective and knowledgeable about the consumers they serve and the industry they regulate.

Americans for Annuity Protection respectfully requests that Secretary Acosta act quickly and delay the entire rule, retain the transitional 84-24 PTE for ***all annuities*** and coordinate its work on the rule with the work that the SEC and the NAIC to establish a harmonized best interest standard.

Thank you for taking the time to read this letter. The actions we request are incredibly important to provide an insured and satisfying retirement.

Sincerely,

Kim O'Brien, CEO
Americans for Annuity Protection