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Labor Department Repeats Past Mistakes in Latest Fiduciary-Only Regulation

WASHINGTON – The fiduciary-only regulatory package rolled out by the U.S. Department of Labor last week is nothing more than a repackaging of its failed 2016 regulation, leading insurance and retirement security associations concluded after a thorough review of the rule. The Department ignored clear evidence of the harm its earlier fiduciary-only approach caused retirement savers, disregarded recent enhancements to consumer protections, and discounted a federal court ruling that vacated the earlier rule.

“Flawed regulations do not get better by using synonyms or making cosmetic adjustments, but that is what the Department has done with its fiduciary-only regulation,” said American Council of Life Insurers (ACLI) President & CEO Susan Neely. “The 2024 regulation has the same flaws and hazards for retirement savers as the 2016 rule that was vacated by a federal court. It’s clear that the Department did not learn from its past mistakes.”

Like its predecessor, the Department’s 2024 fiduciary-only regulation effectively eliminates important sales information and recommendations primarily used by low- and middle-income savers seeking the guaranteed lifetime income in retirement that annuities provide. It leaves retirement savers with fiduciary advisors as their only option for professional financial guidance. Fiduciaries typically work with clients with a minimum of $100,000 to invest, far more than most working-class Americans have in savings.

“The Department chose to move forward with this fiduciary-only approach despite strong evidence of its adverse impact on retirement savers,” said National Association of Insurance and Financial Advisors (NAIFA) CEO Kevin Mayeux. “Before it was struck down by a federal court, the 2016 regulation resulted in more than 10 million American workers’ accounts with $900 billion in savings losing access to professional financial guidance. Sadly, this history will be repeated unless something is done to correct it.”

“This year, the largest number of Americans in history will turn age 65. Most will not have access to a traditional pension and will be relying on their personal savings to last throughout retirement,” said Finseca CEO Marc Cadin. “The Department’s regulation will block retirement savers from accessing information about annuities and the lifetime income they provide. Government regulations that limit these options for retirement are not in consumers’ best interest. We must expand access to retirement choices—not limit it.”

Contrary to assertions by Department officials, the 2024 regulation also defies the Fifth Circuit Court of Appeals ruling that struck down the 2016 regulation. That ruling made clear that the Department’s actions were inconsistent with the Employee Retirement Income Security Act (ERISA), a federal law that governs workplace benefits.

“It is disingenuous for the Department to suggest that this regulation is somehow consistent with the Fifth Circuit’s decision,” said National Association for Fixed Annuities (NAFA) President & CEO Chuck

DiVencenzo. “The fact is that the new regulation does not align with ERISA and will have the same effect as the old one—driving financial professionals who serve middle-income savers out of business. The only option left will be fiduciary advisors who only the wealthy can afford.”

Finally, the 2024 fiduciary-only regulation disregards steps taken by governors, legislators and regulators in 45 states to strengthen protections for annuity consumers by adopting the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model Regulation. These new laws and regulations also align with the SEC’s Regulation Best Interest, greatly enhancing the state and federal standards financial professionals must follow when recommending annuities.

“The Department’s action usurps the authority and expertise of state policymakers to oversee annuities,” said Insured Retirement Institute President & CEO Wayne Chopus. “Financial professionals should always work in their clients’ best interest. Thanks to their efforts, more than 90% of Americans live in a state that has adopted these enhanced best interest protections. More than that, they safeguard consumers while preserving their access to information about annuities and lifetime income.”

More on the Labor Department’s fiduciary-only regulation and its adverse impact on retirement savers is available here.

ACLI, NAIFA, Finseca, IRI and NAFA will consider the next steps they will take to protect retirement savers and their access to the products and services they need for a secure retirement.

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About ACLI: The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 275 member companies represent 93 percent of industry assets in the United States.

About NAIFA: Founded in 1890, NAIFA is the oldest, largest and most prestigious association representing the interests of financial services professionals from every Congressional district in the United States. Our mission – to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members – is the reason NAIFA has consistently and resoundingly stood up for financial services professionals and called upon members to grow their knowledge while following the highest ethical standards in the industry.

About Finseca: At Finseca, we know that financial security improves people’s lives and protects their livelihoods and future wellbeing. We are rising to the challenge of increasing financial security for all.

Finseca represents the men and women of the financial security profession who dedicate themselves to delivering financial security to their clients every day.

About IRI: The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, broker-dealers, banks, marketing organizations, law firms, and solution providers. IRI members account for 90 percent of annuity assets in the U.S., include the foremost distributors of protected lifetime income solutions, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community. Learn more at www.irionline.org.

About NAFA: NAFA, the National Association for Fixed Annuities, is the premier trade association exclusively dedicated to fixed annuities. Our mission is to promote the awareness and understanding of fixed annuities. We educate annuity salespeople, regulators, legislators, journalists, and industry personnel about the value of fixed annuities and their benefits to consumers. NAFA's membership represents every aspect of the fixed annuity marketplace covering fixed annuities sold by independent agents, advisors and brokers. NAFA was founded in 1998. For more information, visit www.nafa.com.