Retirement Income
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Today at the Retirement Industry Conference

By Kerry Pechter   *Thu, Apr 27, 2017*

The consensus here at the LIMRA Secure Retirement Institute/SOA Retirement Industry Conference is that the fiduciary rule is here to stay. But industry executives hope that it will be tweaked to remove the right-to-private-action, which opens firms to class action lawsuits.

Here at the Retirement Industry Conference in Orlando, attendees just emerged from a panel discussion featuring Doug French of Ernst & Young and retirement plan executives Jamie Ohl of Lincoln Financial and Hutch Schafer of Nationwide Financial.

The topic was the Department of Labor's fiduciary rule, which is currently being iced by the Trump administration like a rookie at the foul stripe near the end of a tournament final.

The consensus was that the DOL rule will *not* be rescinded. The "toothpaste is out of the tube and all over the table" is the reigning metaphor. Too much compliance work has already been done; in any case, the financial industry was headed toward fee-based advice and best-interest standards for some time, they said.

But they hope that commissioned sales will not disappear as a payment option, and they hope that some of the more irksome parts of the current rule might yet be surgically removed, and not simply delayed, by the Trump Labor Department.

Both Ohl, president of Lincoln Retirement Plan Services, and Schafer, vice president, business development at Nationwide Retirement Services, said their firms have already done most of the prep work to comply with the rule, and they've accepted that it will emerge in "some form."

Ohl hopes to see the rule's "private right of action" removed from the rule. Much of the retirement industry hopes the same, regarding this right as an invitation to the plaintiff's bar to start preparing suits against deep-pocketed broker-dealers or retirement plan providers or plan sponsors for fiduciary violations.

The private right of action allows aggrieved financial services clients to participate in class action suits rather than submit to arbitration, where industry traditionally has home-court advantage. The Obama DOL insisted on the private right of action as a way to enforce the rule; the DOL lacks its own enforcement powers in this area.

To eliminate conflicts-of-interests in communications with plan participants, Ohl said Lincoln has already created two service groups, one that provides education only to participants and one that provides advice. The core service for plan sponsors is education; advice, either web-based or personal, is available as an option. With rollover marketing subdued, Ohl believes that IRA rollovers will decline and more money will stay in defined contribution plans after job changes or retirement.

On the annuity front, French, an actuary, said that variable annuity sales are down 30% because they're very expensive when the benefits are properly priced. He recommended single premium immediate annuities and deferred income annuities as a better solution for retirees.

A panel representing the broker-dealers' view of the impact of the DOL rule followed the first panel. Panelists included Ryan Abernathy of Merrill Lynch, Scott Stolz of Raymond James and Chuck Lucius of Gradient Financial Group.

Abernathy said that Merrill Lynch is now out of the brokerage IRA business and will serve IRA clients only with fee-based advisors. In a few months, he said, Merrill Lynch advisors will start selling fee-based annuities. Raymond James will continue to allow commissioned brokerage sales to IRA clients and its reps will use the Best Interest Contract Exemption to do so, Stolz said.

Stolz said that if, and only if, signing the fiduciary rule's best interest contract allows Raymond James to collect less defensive documentation when advisors sell annuities on commission—paperwork that demonstrates that advisor compensation didn't motivate the sale—then it would help annuity sales.

But if the burden doesn't go away, he believes, annuities will be even tougher to sell on commission going forward. "Advisors will say 'forget it' and find another solution," Stolz said. He was not hopeful. Commissioned sales will attract as much scrutiny as 1035 exchanges do today, he said. He added that, in the future, major broker-dealers will dictate shelf-wide commission levels to manufacturers, and commissions on similar products will be similar. But with so many differences between annuities, a multiplicity of commissions will remain.

Sales of SPIAs and DIAs will never be robust unless the federal government requires retirees to annuitize a portion of their savings, Stolz predicted, noting that research has shown that consumers expect much higher payouts from annuities than insurers could possibly provide.

Panelist Lucius and panel moderator Al Dal Porto of Security Benefit, in response to an audience question, said they believed that small insurance marketing organizations that distribute indexed annuities today will probably have to merge with larger organizations because they're not large enough to act as supervising financial institutions under the DOL rule.

The conference, mounted by the LIMRA Secure Retirement Institute and the Society of Actuaries, welcomed about 400 attendees, which LIMRA said was consistent with previous years.