Testimony of Ken Specht, Professional Insurance Agent

Kenosha, Wisconsin

Before the House Ways and Means Subcommittee on Oversight,

Hearing on the Department of Labor's Proposed Fiduciary Rule

September 30, 2015

Chairman Roskam, Ranking Member Lewis, and Members of the Subcommittee, thank you for inviting me testify. My name is Ken Specht. For the past twenty-seven years, I have served as a financial adviser with New York Life in Kenosha, Wisconsin. I appreciate the opportunity to share my perspective on the Department of Labor's proposed fiduciary rule. The views that I will present this morning are my own.

As a financial adviser, my goal is to get to know my clients, build relationships, and help them make decisions over the years that will allow them to achieve financial security. I serve my clients' best interest. And, despite having some serious concerns that are outlined below, I support the goal of the Department of Labor's proposed best interest standard.

When I meet with clients, sometimes in their homes or offices, we talk about their families, their circumstances, everyone's health, current and future needs, and desires. I make clear to my clients that without the right information, I can't provide them with the right individualized advice. There are no cookie cutter plans, just tailored solutions to fit their personal situation. Maybe it's a special needs child. Perhaps there is planning involving ownership of a small business, caring for an elderly parent, or concern about outliving assets. Every case is unique.

Through our conversations, and typically through a series of conversations, I work with my clients to understand their financial needs and desires, identify gaps between their dreams for retirement and their current planning, and assess their risk tolerance, both spoken and unspoken. For example, a retiree's risk tolerance often can be understood not just by what is said or not said, but also by the glances between husband and wife. Without a doubt, the single greatest concern that I hear from my clients is a fear that they will run out of money in their retirement.

One of the most rewarding aspects of my job is the fact that after talking through their concerns and their goals, my clients get motivated to do what's right. Many times the worst decisions are made by those who make no decisions. They don't save, they don't invest and they don't plan. Some have described what financial advisers like me do as "nudgenomics." Without my guidance, most of my clients would struggle to focus on their future needs and would avoid making decisions that are in their own best interest like saving more, buying life insurance, or

buying a guaranteed lifetime income annuity that will ensure that they do not outlive their savings.

In other cases, without my guidance and reassurance, my clients would make rash decisions during fluctuations in the market – such as cashing out all their investments during the financial crisis – and losing out on the gains during the recovery. Sometimes my value is evidenced by actions not taken.

In each case, I am committed to serving my client's best interest. Not only is it the right thing to do and the only way that I am comfortable operating – but this is very much a personal business and a long-term relationship business. Nearly all of my clients come from referrals and repeat business. Even my wife was a referral; Judy's parents were clients before I met her. If I don't operate in my clients' best interest, word gets around in a community like Kenosha. Referrals will dry up, and I'm out of business.

Support for Best Interest Standard; Specific Concerns with Department's Proposal

As an adviser with twenty-seven years of experience acting in the best interest of my clients, I wholeheartedly support the Department of Labor's goal of a best interest standard. That is how I operate. But the proposed rule, as written, could hurt middle class consumers – like those I serve in Wisconsin – by cutting off access to affordable advice and a secure retirement. I understand and support the Department's goal in crafting the rule, but simply put, as written it will not accomplish this.

Based on information received from my company and industry trade associations, I have three major concerns with the proposal and the impact it will have on my clients:

1. **The rule seems to equate "best interest" with "lowest cost," even when the cheapest products may not be in a client's best interest.**
2. **It appears to prohibit offering proprietary products, meaning I can't offer them even when they are in the client's best interest.**
3. **It seems to have a bias against commissions, which are usually the most affordable way to pay for financial advice.**

Allow me to share a client story. Bob and Jean were both 55 when he lost his job in 2004. He was a software engineer for a small firm. She was an administrative leader in a Kenosha title company. At that time they did not know what options they had or how to meet their needs in retirement – and were fearful about losing what they had worked so hard to save so close to retirement. They called me; we spent time reviewing their situation and what the future might hold. They indicated they needed about $300 in extra income each month to make ends meet. They used a portion of their savings, about $70,000, to purchase a guaranteed lifetime income annuity, which will pay them $330 per month, every month, as long as either one of them is alive. Today, those payments are still directly deposited into their bank account on the same day each month and will continue no matter how long they live. Guaranteed. Based on their current life expectancy, they will receive payments totaling $147,000 on their $71,000 annuity. If they live longer, they will receive even more.

Under the proposed rule, fewer savers and retirees will have access to that kind of guarantee – for three primary reasons.

1. <u>Proposal Favors Low Cost Products, Even When Not in Best Interest</u>

The Department's proposal, as currently drafted, implies that the cheapest product is always the best product and that cost should be the sole factor when determining whether a product is in a client's best interest. As a financial adviser, cost is always a consideration when I sit down with clients and provide them with recommendations. However, it can't be the only or the determinative factor, particularly when the features, quality and strength of a financial product will determine whether a saver will have a secure retirement or not.

This is especially the case when it comes to guaranteed financial products such as lifetime income annuities. As was the case with Bob and Jean, savers who purchase a guaranteed lifetime income annuity can effectively create their own private pension. Clients like Bob and Jean sleep better at night knowing that they will receive a guaranteed monthly paycheck from the insurance company for as long as they live – regardless of whether there is another economic downturn or even a financial crisis.

Annuities are fundamentally different than other financial products like mutual funds or ETFs where the value rises and falls in relation to financial markets. When purchasing a long

term guarantee like an annuity, customers should be focused squarely on the long term financial strength of the company backing the guarantee. If a retiree is going to hand over a significant portion of his nest egg, he needs to be sure it's going to a company that will be there 10, 20, 30 or more years down the line to meet its promises. And the cheapest annuity often is not in a client's best interest. For example, an annuity backed by a AAA rated company may not always be the cheapest, but it's one that you can count on.

Unfortunately, the Department's singular focus on cost fails to appreciate the value of the quality of the guarantee backing up an annuity – and could lead advisers to offer the cheapest products rather than the safest. And if Bob and Jean had gone with the cheapest annuity provider eleven years ago, it's quite possible that the company might not be around today. The cheapest products often come with the weakest guarantees.

2. Bias against Sales of Proprietary Products by Expert Agents

Even though the Department has stated that it does not intend to prohibit the sale of proprietary products, its proposal seems to have a bias against these products. Under the "best interest" standard that is included in the Department's proposed rule, an adviser must provide advice that:

> Reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs of the retirement investor, ***without regard to the financial or other interest of the adviser, financial institution, any affiliate or other party***.[1]

I agree that advisers must provide advice that reflects the care, skill, prudence and diligence that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs of the retirement investor. That's what I do every day, and as a licensed agent in Wisconsin, I am subject to strict federal, state and company rules that govern how I do business.

---

[1] Dep't. of Labor, 80 Fed. Reg. 21,927, at 21987 and 22020 (proposed April 20, 2015) (to be codified at 29 C.F. pt. 2509-10), emphasis added.

However, the Department's requirement that I must offer advice "without regard to" any financial interest or other interest that I may have seems to require that I have "no interest" in advising my clients, rather than simply having to act in their best interest. As currently drafted, the "without regard to" phrase in the best interest standard could be interpreted to prohibit the sale of proprietary products altogether. Additionally, the Department's proposal imposes additional requirements that put those that sell proprietary products at a disadvantage.

For the past twenty-seven years I have become an expert in New York Life products and solutions. I primarily offer New York Life products – the products that I know best and am best trained on – because New York Life has the highest financial strength ratings among life insurers. As an agent for New York Life, I am proud to have the company's AAA rating and 170-year track record of keeping its promises standing behind me when I am working with my clients. As a mutual, the company is owned by its policyholders and is focused on meeting their needs rather than those of corporate shareholders.

When I meet with prospective clients, I make clear my affiliation with New York Life. While I sell non-proprietary products when they are appropriate for my clients, I primarily sell New York Life products because, after decades of training, I understand exactly how these products work, and because of the mutuality and financial strength of the company standing behind them.

For example, when working with my clients Bob and Jean, I recommended a guaranteed lifetime income annuity from New York Life, because I knew how fearful they were of losing any of their money and how important it was to them that they have the peace of mind that comes from knowing the company that provides them with monthly payments will be there for as long as they live. But under the Department's proposal, the middle class consumer could lose options like this guaranteed income from the safest company.

When clients decide to work with me, they expect me to offer New York Life products. However, the Department's proposal would suggest that I should be selling other companies' products. When a customer walks into a Chevy dealer, they expect to learn the benefits of a Chevy, not a Ford. But under this proposal, because I sell proprietary products, I'm put into a penalty box.

3. Bias against Commissions

Despite the Department's statements to the contrary, the Department's proposal seems to create a bias against commissions. The "best interest" standard under the rule could be interpreted to mean that I cannot even take into account whether I will get paid when deciding whether to provide advice to my clients. Alternatively, it could be interpreted to mean that I must provide advice for a flat asset-based fee, versus receiving a commission for the products that my clients purchase.

Unfortunately, by creating a bias against commissions, the Department's proposal could limit access to affordable investment advice and guaranteed products for my clients. A commission-based compensation structure is also the only structure that is compatible with annuities, where assets are spent down rather than grown. When I sell an annuity, I receive an upfront commission. When spread out over the duration of the annuity, the cost of the commission is much lower than the 1% annual recurring fee typically associated with managed accounts. For example, the commission that my clients, Bob and Jean, paid for their lifetime income annuity that has provided them with guaranteed income for the last eleven years works out to be 1/5 of 1% per year.

To ensure that middle income savers continue to have access to affordable, individualized advice, it is important that the Department eliminate any suggestion that a fee-based account is preferred over a commission. Without access to commission-based advice, savers like Bob and Jean could lose access to affordable advice, be subject to higher fees and pay more for lifetime guarantees.

Robo-advice Does Not Meet All Needs

Before I conclude, let me take a moment to comment on suggestions by the Department of Labor that savers with small accounts can turn to computer software or "robo-advice" for guidance. While computer software may be a helpful tool for some savers, robo-advisers will never fully replace personalized, face-to-face financial guidance.

Clearly many of the products I provide can be bought online, but people in Kenosha still choose to work with me. Here is why I think that is. We are trained to ask the tough questions

and dig for honest answers.   We don't just talk, we listen. A computer algorithm cannot assess the emotion of a person clicking through an online questionnaire. When I sit down with my clients, I can sense their hesitation and their unspoken fears, and I can ask the right questions to understand if they have unique needs or circumstances that a computer formula does not capture.

Based on my experience, people also want to have a local adviser whose name and face they know, whom they can depend on for help next week, next year and in the next decade. Websites and 1-800 numbers may offer cheaper advice, but with something as important and scary as retirement, people want to work with someone they trust and a company they trust. Humans may not be the cheapest, but we offer our time, expertise, and personalized guidance and care. And what is clear to me after twenty-seven years in the business is that a one size fits all approach to investing is not in a client's best interest.

Conclusion

In closing, I want to again state my support of the Department's goal of a best interest standard. As I mentioned at the outset, I serve the best interests of my clients everyday – and have for the past twenty-seven years. No one in the industry wants to see advisers misleading clients. Bad actors diminish the collective trust that clients place in advisers and create problems that good advisers must spend time correcting. However, the combination of vague standards, unfounded biases and heightened legal risk inherent in the rule means fewer savers would have access to my guidance and my company's guarantees. I would like to thank the Subcommittee for its time and would be happy to answer any questions.