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June 15, 2010

Senator Kohl
U.S. Senate Special Committee on Aging
G31 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator,

Attached you will find the testimony delivered by Fiduciary Compliance Center, LLC in response to the Committee's inquiry into Lifetime Income Solutions for our aging population. In general, we are supportive of the continual efforts on behalf of lawmakers to explore such a solution; however, we do have concerns about the financial industry's management of these products. While we regret our testimony could not be delivered verbally at the hearing, we are pleased to have it considered as you hear the varying perspectives on this subject.

Due to Fiduciary Compliance Center's business model and collective professional experience of the thought leaders who manage the firm, we offer a unique perspective to the Committee. Our interests in this subject are simple, "To make certain that our aging population is not harmed by these solutions and that a tangible benefit is delivered to all those who invest." As you will hear in our testimony, we have serious concerns about the likelihood of our financial services industry being able to deliver on this interest.

Jessica R. Flores, Managing Partner of Fiduciary Compliance Center, LLC respectfully submits the attached testimony for the "The Retirement Challenge: Making Savings Last a Lifetime" hearing held by the U.S. Senate Special Committee on Aging." If the Committee has questions about this testimony or any other related subject, please feel free to contact Jessica Flores by any of the following methods:

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Respectfully,

Jessica R. Flores
Managing Partner
Fiduciary Compliance Center, LLC

**Hearing Held by U.S. Senate Special Committee on Aging
The Retirement Challenge: Making Savings Last a Lifetime
June 16, 2010**

**Testimony of Jessica R. Flores, Managing Partner
Fiduciary Compliance Center, LLC**



My name is Jessica Flores. I am the Managing Partner of Fiduciary Compliance Center, LLC. Fiduciary Compliance Center is a boutique consulting firm that brings together industry leading subject matter experts to deliver solutions to the plan sponsor community that improve employer-sponsored retirement plans for the participants and their beneficiaries. We do this by digging deep into the practices of service providers, investment managers and benefit consultants. From our work in this area, we have grown increasingly alarmed by the new Lifetime Income Solutions and the affects these products will have on the future of our aging population.

I would like to first state that I agree we need a solution to help ensure that retirement savings lasts through retirement and is not taken out and spent in the first couple years. I think that is an obvious fact that we can all agree on regardless of who we represent in this process.

That said however, is about all I agree on with the other industry experts on this subject. While in theory, just like most initiatives of the Department of Labor and Legislators, this sounds like it is in the best interest of the majority of American workers, the application of this solution will be where the problems hide. Let's not forget who is lobbying for this solution and who will ultimately manufacture such a product.

This is a great idea if it were structured in the sole interests of participants, which most products, especially the bundled ones offered by the very providers who have lobbied for this effort are not and are not required to be managed in the interests of participants.

My concerns about a mandatory or any sort of default Lifetime Income Scheme is as follows:

Steps absolutely must be taken to protect participants from spending up their retirement, but the products should be manufactured independently in the sole interests of participants and should impose fiduciary status on those who manufacture them.

Let's hope that the industry is not successful in defaulting employer contributions into these products. The litigation backlash would be enormous and if lawmakers protect fiduciaries from that backlash they will do so by selling out the interests of the participants.

We cannot become such a controlling government that we decide how folks spend their money, that thought is absurd. I think enforcing that some percentage is paid out over a de-cumulation phase and not in a lump sum makes sense, just do not define what vehicle that payout phase is invested in. By doing so you give all of the control to the industry powerhouses and accomplish exactly what they desire, guaranteed investments for the long term in their poorly managed products.

The industry powerhouses and the lobbying industry associations who claim to represent the interests of 10's of millions of participants while in reality voice the desires of the folks that profit from the participants are the key drivers behind this initiative. They have sophisticated studies and reports to offer that have undoubtedly been prepared by incredibly bright people to swindle lawmakers into buying into this whole thing just like they did during the efforts to get the target date funds into the QDIA regulations. These companies that claim to save participants from themselves will do all they can, as they have, and continue to do to distract lawmakers from the obvious – they are self-serving organizations that use the money of hard-working Americans to make profits with no regard as to the affect on the participant's accounts. This is true now, has always been true, and will always be true with the standards and protections we have blessed these organizations with receiving.

I ask you to spend 2 minutes considering the obvious do you really think this scheme is going to be the answer?

1. Didn't these same financial and investment experts manage the pension assets all of this time? And how is that working? They could not or arguably did not manage those assets to meet actuarial assumptions.
2. Didn't these same organizations manufacture, manage, make discretionary decisions for and then coerce lawmakers into a creative default scheme for a cute little product called "target date funds"? Were those funds not supposed to be "THE" answer for retirement accumulation? Did we assign any liability to those manufacturers who behaved as discretionary functional fiduciaries yet escaped the liability and were permitted to self-deal? And how did that work out? Well, being that most hid extremely aggressive fixed income strategies into an allocation that appeared conservative to most fiduciaries and participants with no repercussions for their inappropriate allocations leading to massive losses in 2008, I would say it didn't go so well.
3. And, let's not forget that this scheme has indeed already been created. What about fixed annuities? Why is this going to be any different than a fixed annuity? The insurance company earns a return in the market, credits the minimum amount they can get by with to contract holders and then keeps an undisclosed ridiculously excessive spread for themselves. This vehicle has obviously failed to adequately get savers where they need to be, so why are we now turning over this creative power to the same entities?

This effort is simply another scheme that will provide billions of dollars in revenue to the financial industry while providing minimal growth to investors. There will undeniably be conflicts of interest, self-dealing and minimal liability associated with the management of these vehicles.

If lawmakers continue to offer liability exemptions and relaxed fiduciary standards to the industry players as they have always done in the past, you can count on another major catastrophe like that of the target date funds. The good news is that this one will not be as evident nor as concentrated. Instead this one will occur over time when retirees are not experiencing reasonable growth in their accounts and therefore do not receive the same benefits they would if their accounts were invested solely in the interests of the retirees. Meanwhile, the financial institutions will earn billions over the course of these deals. Now throw in a mandatory arrangement and you have guaranteed their future earnings, great news for the shareholders of these institutions, bad news for investors in the products.

When will the day arrive when our government stops the bleeding of investor savings and regulates the institutions that manage this money? Why are institutions set up to profit from investor savings in their own interests with no accountability for ignoring the investors' interests? We have relaxed courts that have permitted self-dealing and discredited any fiduciary duties that were owed to investors by failing to hold the industry accountable.

I must hand it to the industry, this is a good sham. Default everyone into a target date scheme that makes billions of dollars for the industry, then when they are done sucking that dry, roll the accounts into an income scheme that will ensure they make billions more with no regard for the investor. If this becomes mandatory, I would expect to see an outcry from the American public and they may just stop funding their 401k plans altogether as their money would do better under their mattresses.

This is a scheme being sold to the Obama administration and nothing at all more than that! This is not the first one or the last and by allowing this you are selling out the retirement savings of the very people you are trying to protect. The industry regulation efforts must change and change drastically before this should be even be considered. Do not be fooled by the studies and reports, just chase the buck and you will always find the motive behind such a scheme like this lifetime income product.

Questions have been posed as to the best disclosure methods for these lifetime products. While lawmakers seem to always come back to improving disclosures as the best way to protect investors, the fact is that in most cases this additional paperwork has no value to the readers. No matter what you provide to participants, they will always be the underdog in this scheme. The industry knows how to overcomplicate disclosures and distract investors away from critical information so they can continue with business as usual. Fiduciaries routinely fail to disseminate the information overload to make good decisions for their plans. You cannot expect participants to be able to do this either.

No instead, we should be focused on proper regulations, liability assignment and standards of care and loyalty which should be enforced and monitored at the regulatory level and not be passed off to fiduciaries and participants who are always behind the curve on the industry's games. More disclosure only protects those who issue the disclosures and never protects the investor. In fact it more accurately removes the rights of investors by reducing the viability of their legal claims.

We bury this stuff in the fine print, the industry admits to self-dealing practices and even touts they are permitted to self-deal in these 300 page documents. Meanwhile the commercials they air every day to market to our aging population show a much different story of wealth protection and expert investment services. When things go bad for the investor and they file a claim, the lawyers practically abuse the investor in depositions to the point they wonder why they bothered filing a claim at all after losing ½ of their life's savings. We have got to start protecting the investors and stop protecting those who only desire to profit from the investors.

Disclosures and education is not the answer, you will get no where and only lead to more confusion and continue to give the power to the industry. It's time for the regulatory agencies that are funded by taxpayers and fines to do their jobs and regulate. They need to hire industry insiders and experts in the areas of fraud and willful omissions. Forget trying to educate the common man on how to make sure he's not being fed misrepresented information. And that does not mean, like the Department was convinced in the QDIA scheme, that the industry should take over without liability as they have allowed. Instead, it means service providers manufacturing these schemes should carry the most extensive liability far beyond that assigned to fiduciaries who have no idea about how the business actually works. Assign the liability to those who are the experts and hold the power and discretion. I guess I continually fail to see why lawmakers have yet to acknowledge this very basic idea.

Please tread slowly and please do not continue to be distracted by impressive charts and studies. And do not for one minute believe that some industry association in any way represents the American workers because those are not the voices lobbying behind the scenes. The biggest contributors and most active members of any industry association is very simply the industry powerhouses and those voices are very talented in the art of selling what is best for participants to our legislators and regulators, meanwhile acting always in their own interests. Put the interests of the participants first and stop putting up with these conflicts of interest and self-dealing arrangements.

Thank you for your time and interest in protecting the wealth and economic stability of our nation and its people.