



American Council of Life Insurers (ACLI) Statement for the Record
House Financial Services Committee
Subcommittee on Capital Markets and Government Sponsored Enterprises
“The Impact of the Dodd-Frank Act on Municipal Finance”

July 20, 2012

The American Council of Life Insurers (ACLI) is pleased to submit this statement for the hearing record expressing the concerns of the life insurance industry about a rule proposed by the Securities and Exchange Commission (SEC) establishing a registration program for “municipal advisors.” The stated purpose of the proposed rule is to implement Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).

The American Council of Life Insurers is a Washington, D.C.-based trade association with more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. ACLI advocates in federal, state and international forums. Its members represent more than 90 percent of the assets and premiums of the U. S. life insurance and annuity industry. In addition to life insurance, annuities and other workplace and individual retirement plans, ACLI members offer long-term care and disability income insurance, and reinsurance. Its public website can be accessed at www.acli.com.

ACLI member companies administer retirement plans established by municipalities for their employees, including defined benefit, defined contribution, 403(b) and 457 plans. As described below, the proposed rule represents a profound and costly change for life insurers, municipalities, and their employees in the regulation of government retirement plans. The proposed rule would layer new municipal advisor regulations onto existing regulatory regimes to which life insurers, broker-dealers, and investment advisers are already subject. This duplication of existing regulation is both unnecessary and counterproductive.

Furthermore, the proposed rule is contrary to Congressional intent and to the plain terms of Section 975 of the Dodd-Frank Act. The SEC has made an overly broad interpretation of Section 975, proposing to apply the municipal advisor registration requirement to broker-dealers marketing insurance contracts that fund government plans and potentially to the investment advisers managing assets underlying those contracts. The stated purpose of this broad application is to implement the Dodd-Frank provision and thereby address a perceived gap in municipal financial transactions.

However, the Dodd-Frank Act did not alter the definition of “municipal securities,” which continues to be defined under the Securities Exchange Act of 1934. There is no evidence of Congressional intent

to expand the definition of municipal securities to include retirement or similar services provided by life insurers, broker-dealers marketing insurance contracts that fund government plans, or investment advisers managing assets underlying those contracts. To the contrary, Congress specifically intended Section 975 to address the market for municipal securities and previously unregulated market participants and unregulated financial transactions in that space. The delivery and management of government retirement plans were not intended to be covered by Section 975.

In addition, neither the products and services provided by life insurers, nor the broker-dealers and investment advisers described above, represent a regulatory gap needing to be addressed by the proposed rule. Life insurers are subject to extensive product, operational, market conduct, financial condition, and solvency regulation by the states. Variable products offered by life insurers are regulated by the SEC. Broker-dealers affiliated with life insurers are regulated under the Securities Exchange Act of 1934, and investment advisers are regulated under the Investment Advisers Act of 1940. According to the Employee Benefit Research Institute's *Fundamentals of Employee Benefit Programs*, "Constitutional and contractual law guarantees, which may be expressed in state statutes and decisional law, afford members of public employee retirement plans many of the protections granted to members of ERISA-regulated plans by federal statutory law. In fact, it is safe to say that public employees have protection that is comparable with that of private-sector employees today, although from different sources." As a result, there is no compelling reason to add another regulator and regulatory regime in this area.

ACLI welcomes the recognition by SEC Chairman Mary Schapiro that the proposed rule is overly broad. However, definitive action is necessary to prevent added costs or disruptions to the delivery of retirement plans to public employees across the country. ACLI supports the legislation authored by Representative Robert Dold, H.R. 2827, which would clarify the definition of a municipal advisor. ACLI thanks Representative Dold and the Subcommittee for its leadership on this important issue. ACLI encourages the Subcommittee to continue to exercise its oversight authority over the SEC as it engages in any final rulemaking in this area. ACLI believes that the proposed rule should be withdrawn in its entirety and revised in a manner consistent with Congressional intent and the plain terms of Section 975.

Thank you for convening this important hearing and for your consideration of the views of ACLI and its member companies.