NATIONAL ALLIANCE OF LIFE COMPANIES
An Association of Life and Health Insurance Companies

December 21, 2023

By electronic submission via www.regulations.gov

The Honorable Lisa Gomez
Assistant Secretary
Employee Benefits Security Administration
Department of Labor
200 Constitution Ave, NW
Washington, D.C. 20210

Re: *Proposed Retirement Security Rule: Definition of an Investment Advice Fiduciary*

Dear Assistant Secretary Gomez

I serve as the Executive Director of the National Alliance of Life Companies (the NALC), a trade group of more than fifty life insurance companies and associates that represents the interests of small and mid-sized insurers and their policyholders.

NALC member companies have provided retirement planning products to lower and middle-income customers in underserved markets for decades, working hard to develop products to better serve them, and to build a relationship of trust and confidence. It is with that background that we comment on the proposed rule package (the "Proposal").

We write to express strong objections to the Proposal, as it would fundamentally alter the current five part test used to determine fiduciary investment advice status under Title I and Title II of the Employee Retirement Income Security Act (ERISA), in addition to changes to the existing prohibited transaction exemptions (PTEs) applicable to ERISA fiduciaries that provide investment advice to retirement plan participants and owners of IRAs. As described in more detail in this letter, there are a number of serious deficiencies with the Proposal.

The Proposal will significantly harm American savers and retirement account owners. Those hardest hit will be lower and middle-income investors; a demographic that is already grossly underserved by financial services firms, and the most vulnerable population in terms of retirement security.

We share the concerns expressed by others that the Proposal would actually *reduce* retirement savings among lower and middle-income workers. While that outcome would be unacceptable under the best of economic conditions, the changes outlined in the Proposal could not come at a worse time. American workers are still fighting to recover from the pandemic's economic impact on their personal finances, and in millions of cases their small businesses.

Moreover, lower and middle- income workers have been hit hardest hit by the surge in inflation over the past few years. Given these circumstances, every effort should be made to create the conditions for Americans to *increase* their retirement savings. The Proposal would have the exact opposite effect, leaving these savers poorer and less prepared for retirement.

This is not mere speculation. Research studies measuring the impact of the 2016 DOL Fiduciary Rule have demonstrate its negative impact on American consumers. A 2017 study conducted by Deloitte titled *"The DOL Fiduciary Rule: A study on how financial institutions have responded and the resulting impacts on retirement investors" (https://www.sifma.org/wp-content/uploads/2017/08/Deloitte-White-Paper-on-the-DOL-Fiduciary-Rule-August-2017.pdf)* revealed that availability of financial services products and services *decreased* when the 2016 Fiduciary Rule was implemented:

1. Access to brokerage advice services has been eliminated or limited by 53% of study participants as part of their approach for complying with the Rule.
2. The shift of retirement assets to fee-based or advisory programs has accelerated as the result of the elimination or limitation of brokerage advice services.
3. 95% of study participants have made changes to the products available to retirement investors, including limiting or eliminating asset classes offered and certain share classes or product structures.
4. Financial institutions' responses and approaches to complying with the Rule have varied, reflecting the wide ranging legal and compliance interpretations of the Rule.
5. Rule implementation and ongoing compliance efforts have caused significant operational disruption and increased costs for financial institutions.
6. Uncertainty surrounding the future of the Rule is causing financial institutions to incur additional real costs as well as ongoing opportunity costs.1

A more recent study conducted in 2021 by the non-partisan Hispanic Leadership Fund (HLF) (https://hispanicleadershipfund.org/wp-content/uploads/2021/11/FINAL_HLF-Quantria_FiduciaryRule_08Nov21.pdf) found that efforts to resurrect the 2016 Fiduciary Rule would produce the following results:

1. Reduce the projected accumulated retirement savings of 2.7 million individuals with incomes below $100,000 by approximately $140 billion over 10 years, and
2. Have the most adverse effects on Blacks and Hispanics – reducing their projected accumulated IRA savings by approximately 20 percent over 10 years – contributing to an approximately 20 percent increase in the wealth gap attributable to IRAs for these individuals. 2

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1 *The DOL Fiduciary Rule: A study on how financial institutions have responded and the resulting impacts on retirement investors, pp. 5 – 6.*

2 Analysis of the Effects of the 2016 Department of Labor Fiduciary Regulation on Retirement Savings and Estimate of the Effects of Reinstatement, p. 1.

Other key findings from the HLF study include:

1. Low and middle-income individuals will get hit the hardest and will lose access to valuable investment assistance that DOL disregarded in its 2016 analysis.
2. Minority populations would be most significantly impacted, including reducing the availability of personalized advice that is critically important for minority populations.
3. The loss of advice could greatly exacerbate the wealth gap by reducing the projected accumulated IRA balances of Black and Hispanic Americans by approximately 20 percent over 10 years.
4. The pandemic has underscored the need for financial assistance.
5. DOL's 2016 regulatory impact analysis vastly understated by a factor of 3x the actual compliance costs of the 2016 rule, which gets passed on to consumers.
6. The effect of the 2016 DOL rule on lifetime income and protection against longevity risk was particularly adverse because the rule discouraged transaction-based advice, which is how most savers have access to annuities.[3]

Whatever rationale that may have existed for the 2016 Fiduciary Rule has now been addressed by significant regulatory changes at both the federal and state level. The SEC's adoption of Regulation Best Interest was a groundbreaking enhancement to professional standards and consumer protection. Similarly, in February of 2020, the National Association of Insurance Commissioners adopted The *Suitability in Annuity Transactions Model Regulation* (#275) that imposes a robust "best interest" standard for annuity sales.

Finally, as noted in point #5 above, we are very concerned about the additional costs to comply with the Proposal that would be borne by NALC members and their customers. Smaller and mid-sized life insurers already bear a disproportionate share of the compliance costs that are imposed on the industry. We are very concerned that the Proposal would force some of these companies to limit their products and services, or to exit the market altogether. The persons most adversely impacted would be lower and middle class savers who depend on those carriers for their retirement and financial services needs, and it would limit badly needed competition.

Thank you again for the opportunity to address our comments.

Sincerely,

Jim Hodges

Jim Hodges
Executive Director
NALC

3 Ibid, pp. 2 – 3.