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Office of Regulations and Interpretations
Employee Benefit Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Office of Exemption Determinations
Employee Benefit Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: RIN 1210-AC02 Retirement Security Rule: Definition of an Investment Advice Fiduciary; and Related Exemptions

Dear Assistant Secretary Gomez:

On behalf of Lincoln Financial Group (Lincoln), I am writing to express significant concern with your "Retirement Security Rule," more commonly known as the "Fiduciary Rule Proposal," and ask that you withdraw and reconsider this harmful proposal.

Lincoln provides solutions that empower people to take charge of their financial lives with confidence and optimism. Our core business areas – annuities, life insurance, retirement plan services and group protection – focus on supporting, preserving, and enhancing people's lifestyles and retirement outcomes. The goal of Lincoln and its employees is to provide individuals and their families with financial peace of mind by helping them to plan, protect and retire with confidence. Our customers also rely on the financial professionals that sell our products to assist them in planning their financial futures, protecting loved ones, securing lifestyles and incomes and preparing for the cost of retirement and long-term care.

Unfortunately, the proposal issued by the Department of Labor (Department) would undermine these goals and make it harder for Americans to access products and services that provide financial confidence and ensure successful retirement outcomes. The adverse impact will be felt by Americans, especially lower- and middle-income savers, who need to be able to depend on guaranteed income in retirement. In short, this proposal will harm the very people the Department intends to help.

In this letter we lay out a number of our own concerns, but we also agree with and support our industry trade groups who have submitted comment letters addressing these and other concerns, including those submitted by the American Council of Life Insurers (ACLI), the Insured Retirement Institute (IRI), Finseca and the Committee of Annuity Insurers (CAI), among others.

The Value and Importance of the Security that Annuities Provide

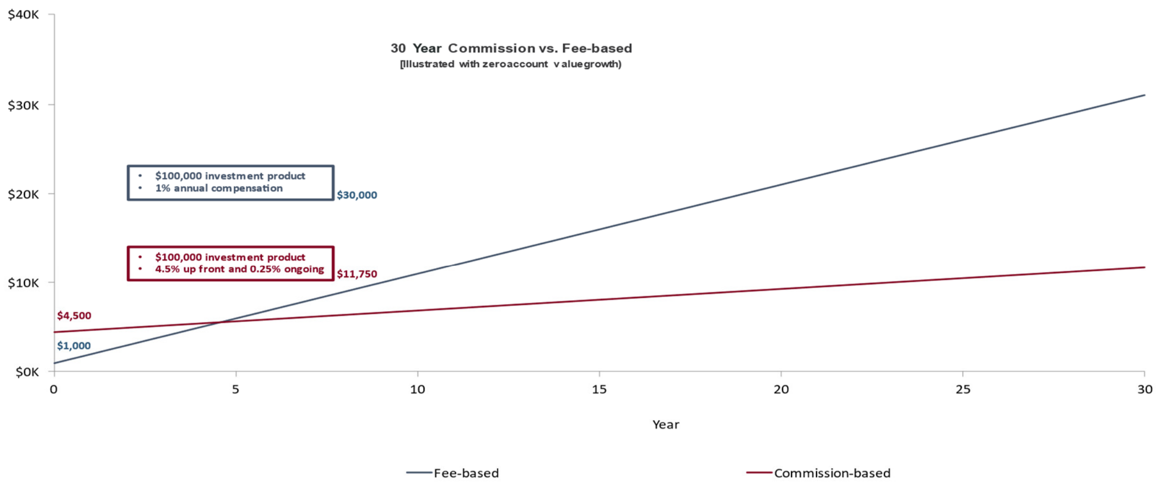
Repeatedly in the proposal and in its public roll-out, the Department makes unfounded and incorrect statements about the value of annuities. The truth is that Americans face significant challenges when it comes to ensuring financial security in retirement, challenges that can be uniquely addressed by annuities. This is because annuities are the only type of financial product that can guarantee income throughout retirement, distinguishing them significantly from other investments such as mutual funds.

There are a variety of annuities available in the marketplace to meet a wide range of consumer needs. Some provide immediate income and others income later in life. Some annuities offer guaranteed returns that are tied to market indexes, or provide some access to liquidity. Others provide protection against loss of principal. But all of them provide access to some kind of guaranteed retirement income, a benefit of increasing importance in an era of declining employee pensions. In 2017, Lincoln co-founded the Alliance for Lifetime Income, with the purpose of creating awareness and educating Americans on the value and importance of having protected income in retirement. 2024 will see the greatest surge of Americans turning 65 in history, and addressing the looming retirement crisis by educating Americans about the importance of having protected income from an annuity in their retirement plan becomes even more important.

The Department's justification for its proposal focuses nearly exclusively on the costs of an annuity, and of course there are costs to providing annuity guarantees. But annuities also come with benefits that no other financial product can provide: retirement savers are paying for the financial certainty and peace of mind that annuities offer. The Department's proposal appears to have largely disregarded these benefits.

The Proposal Undermines the Important Work of Financial Professionals

Americans learn about the benefits, features and costs of annuities from financial professionals who are paid through commissions and related compensation for the sale of the annuity. Life insurers have long sought to structure compensation in a way that encourages financial professionals to devote the necessary time and attention to the sale of annuities. For that reason, insurers typically pay a sales commission upon the completion of an annuity sale to compensate financial professionals for the significant effort involved in learning about, marketing and selling annuity products. In addition, insurers often provide resources to intermediaries to assist financial professionals with training, marketing, and other expenses that are necessary for a financial professional to appropriately understand and communicate the benefits, features and costs of the products they sell. Today, the vast majority of annuities are sold through this commission-based compensation structure. And as illustrated in the example below, in the case of long-term purchases, the customer often pays less—and the financial professional often earns less—under the commission-based model than would be the case under the fee-based model used by fiduciaries:



It is well accepted that a fiduciary relationship is one of trust and confidence, involving continuous advice that is provided over time in exchange for an ongoing fee. By forcing nearly everyone who works with a retirement investor to become a fiduciary regardless of the underlying relationship, the proposal places significant new burdens and legal risks on financial professionals, particularly those who are paid under a commission-based compensation structure that does not fit well with fiduciary status. This creates an unacceptable and irrational barrier between financial professionals and the low- and moderate-income savers for whom the commission model may make more sense, denying those individuals access to the savings opportunities and retirement income solutions they want and need.

Importantly, the financial professionals that sell our products are fully regulated by the Securities and Exchange Commission (SEC) and state insurance regulators, who have comprehensive rules regarding the standard of care, disclosure, compensation, and supervision. Each and every sale of our products is fully and sufficiently regulated. These rules focus appropriately on the unique features of the products being sold, and do not create unnecessary distinctions based on whether the product is being sold in an ERISA plan or an individual retirement account (IRA). As discussed further below, the Department not only lacks the legal authority to impose yet another layer of regulation on these sales; it has also failed to demonstrate that existing regulations are deficient, or that more regulation is needed.

The wealthiest Americans can afford to pay for a fee-based fiduciary advisor, but most Americans cannot. And those who do not have access to that level of service will be harmed by this proposal, because individuals who work with a financial professional, whether or not a fiduciary, are more likely to contribute to retirement, more likely to save a larger percentage of their income and are more confident in their retirement security.[1]

Lincoln and the financial professionals with whom we work support appropriate regulatory oversight that protects consumers. What we oppose are rules that are simultaneously duplicative and conflicting, impose fiduciary liability where it does not belong, exceed the Department's authority under ERISA, and limit consumers' ability to choose the kind of advice that best fits their finances and retirement security needs.

The Proposal is Inconsistent with ERISA

In 2018, the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) vacated the Department's 2016 fiduciary rule completely, finding that the 2016 regulation conflicted with the text of ERISA and the Department had exceeded its authority in regulating IRAs. The 2016 regulation, the Fifth Circuit said, improperly required brokers and insurance salespeople to assume obligations of loyalty and prudence that are only required of ERISA plan fiduciaries.

This "new" proposal incorporates the same expansive and unjustified concepts that were included in the Department's 2016 regulation vacated by the Fifth Circuit. The proposal sweeps in the same financial professionals, covers the same conduct already fully regulated by the SEC and state insurance commissioners, and imposes the same kind of unnecessary regulatory burdens on the sale of annuities and other products as the 2016 proposal.

Under this new proposal, just as under the 2016 regulation, a financial professional becomes a fiduciary by making a single product recommendation to an IRA owner, plan participant, or plan sponsor in connection with a plan or IRA, if that recommendation is in any way tailored to their individual circumstances. The proposal also potentially covers sales recommendations made to intermediaries, such as plan consultants or advisers, who themselves serve as fiduciaries to a plan or IRA owner, even when the intermediary does not expect or want a wholesaler or relationship manager to be giving fiduciary advice.[2] All of this is exactly what the Fifth Circuit

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[1] Alison Salka, Ph.D., LIMRA *Retirement Research 2012 Findings and Trends: Use of and Impact of Advisors* (2012); Cerulli Associates, The Cerulli Report, U.S. Retail Investor Products and Platforms 2014: Matching Product and Distribution Strategy to Client Demands (2014).

[2] The Department does not explain why it declined to expressly carve these activities out of the proposal, other than to say it was not necessary. The proposal would add new friction to these activities, as wholesalers and relationship managers have roles that are even more unsuited to fiduciary status than financial professionals but would have to operate with increased risk that they could be assigned fiduciary status at any time based on the Department's or someone else's subjective assessment of their conduct.

said was inconsistent with what Congress intended in creating the concept of an ERISA fiduciary.

The Proposal Undermines Bipartisan Improvements to the Retirement System

In the past five years, Congress has passed two landmark retirement security laws, the SECURE Act of 2019 and the SECURE 2.0 Act of 2022, both of which contain a number of provisions to improve coverage, increase savings, and assist Americans in turning their savings into income in retirement. Many of the provisions in the two bills are aimed directly at removing barriers to lower- and middle-income Americans generating guaranteed income in retirement and facilitating innovative products and services to improve retirement security. Lincoln was proud to support these bipartisan bills, and we have already implemented many of the improvements in our Retirement Plan Services business, which offers employer plan sponsors a broad array of plan services, including plan recordkeeping, compliance testing, participant education and trust and custodial services.

Because of these two laws, employers have more certainty regarding the fiduciary standards related to including an annuity in their plan. Lifetime income solutions can be more portable as employees move jobs. And SECURE 2.0 even made numerous improvements to plan distribution rules to make it easier for retirees to purchase guaranteed income.

This proposal undermines the accomplishments of the SECURE Act and the SECURE 2.0 Act. By turning virtually every annuity sale involving a retirement account into a fiduciary transaction and imposing unworkable conditions and new legal risk on financial professionals and insurers, the proposal discourages savings and harms access to the very retirement income products, services, and solutions that the SECURE Act and the SECURE 2.0 Act seek to promote.

Regulation of Annuity Sales Belongs with the States and the SEC

In our more than 100 years of existence, Lincoln has seen many changes in the regulation of our products and services, and we are happy to engage with our regulators on rules that protect our customers and strengthen our financial system. The Lincoln National Life Insurance Company (LNL), the primary life insurance subsidiary of Lincoln National Corporation, is domiciled in the State of Indiana and its principal insurance regulatory authority is the State of Indiana Department of Insurance, which regularly examines us. The Indiana Department of Insurance, other state insurance regulators, the SEC, and FINRA, all oversee sales of our products. Collectively, these regulators have, in fact, made significant improvements in recent years to the standards of conduct that apply to the sale of our products, which the Department's proposal completely ignores.

Indeed, in addition to the SEC's Regulation Best Interest, 42 states have adopted the Best Interest revisions to the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model which enhanced the standard of care as it relates to annuity products. The Department's proposal essentially assumes that state insurance regulation is inadequate, or that state regulators are incapable of overseeing the sale of annuities.

In fact, the Department has issued a proposal that makes it a second regulator of insurance products, by requiring every annuity sale involving a retirement account to pass through a prohibited transaction exemption and giving the Department the authority to simply disqualify a financial professional from selling a particular insurance company's products.

The Department is Rushing the Rulemaking Process and the Transition Period is Much Too Short

We have significant concerns with the process being employed to implement this regulation. The Department has issued an abbreviated comment period and taken the unprecedented step of holding a hearing prior to the end of the comment period, which fails to provide stakeholders with a meaningful opportunity to participate in the rulemaking process. In 2015, Lincoln filed an 83 page comment letter, and our affiliated dually-registered broker-dealer/investment adviser entities filed a separate 43 page comment letter, which together detailed our concerns and suggested changes to the Department's previous proposal.[3] This time we have a substantially abbreviated comment period spanning the holidays and the Department has rejected reasonable requests for more time, despite asking the industry to respond to more than 100 questions in the proposal. In short, we strongly believe that this rulemaking process does not provide for sufficient input, given the broad sweep and impact of the proposal.

In addition to a rushed regulatory process, the Department has proposed a completely unrealistic period for the industry to come into compliance. The Department has proposed to make the regulation effective *60 days* after the issuance of a final rule, which could come out as early as spring 2024. Back in 2015, we made the point in our letters that the proposal was enormous and arguably the most significant in the history of ERISA. We said that even if the

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[3] See comment letter from Dennis Glass, President and CEO, Lincoln Financial Group (July 21, 2015), available at https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00643.pdf; comment letter from David Berkowitz, President, Lincoln Financial Network (July 21, 2015), available at https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00644.pdf. We followed up with another detailed letter after a series of meeting with key administration officials. See letter from Dennis Glass, President and CEO, Lincoln Financial Group (Sept. 24, 2015), available at https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/03088.pdf.

Department made significant modifications to ensure that the rule was workable, compliance would be monumental. These points remain true today.

The scope of the changes that the current proposal would require is at least as large as the 2016 regulation and cannot be implemented in less than two years, much less two months. The proposal would require a complete reworking of the sales process for annuities, significant new internal procedures and policies, the development of new disclosures, and an examination of every type of compensation paid in connection with the sale of annuities, not just to financial professionals but also to financial institutions and other third parties such as insurance marketing organizations (IMOs). This would come while the industry is heavily committed to implementing the SECURE 2.0 Act and many other regulatory changes.

Even worse, if financial professionals and financial institutions do not have enough time to adjust, the only alternative is to prohibit some or all annuity sales involving retirement accounts, either temporarily or permanently. And that will result in decreased retirement security for American savers and retirees.

Conclusion

As one of the oldest life insurance companies in the United States, Lincoln has worked for more than 100 years to provide greater financial security and opportunity for all Americans. I am proud to be the latest in a long line of Lincoln leaders advancing this critical mission.

We share the Department's goal of ensuring that customers receive advice and product solutions that are in their best interest. Unfortunately, this proposal, which is nothing more than a repeat of a regulation already struck down by the federal courts, will do more harm than good. As a country we face enormous challenges to ensure Americans not only save enough, but also have access to the services and product solutions that they need to ensure a secure and dignified retirement. This project is an unfortunate decades-long distraction. We urge you to withdraw the proposal, or at a minimum make significant changes before issuing a final rule.

If you have any questions, please contact Abbie Pancoast, Senior Vice President, Chief Counsel, Product, at abbie.pancoast@lfg.com or Roman Gabriel, Senior Vice President, Head of Government Relations, at roman.gabriel@lfg.com.

Respectfully Submitted,

Ellen Cooper

Ellen Cooper
President & CEO