January 2, 2024

The Honorable Lisa Gomez
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20001

Dear Assistant Secretary Gomez:

Re: Retirement Security Rule: Definition of an Investment Advice Fiduciary (RIN 1210-AC02); Proposed Amendment to Prohibited Transaction Exemption PTE 84-24 (Application No. D-12060); Proposed Amendment to Prohibited Transaction Exemption PTE 2020-02 (Application No. D-12057)

We, the undersigned state trade associations (the "Joint Trades"), appreciate the opportunity to provide comments regarding the regulation recently proposed by the Department of Labor (the "DOL") entitled "Retirement Security Rule: Definition of an Investment Advice Fiduciary" (the "Proposal").

The Joint Trades represent the life insurance and annuity industries throughout the country. We are submitting comments on the Proposal because it would dramatically expand the definition of "investment advice fiduciary" under the Employee Retirement Income Security Act in a manner that would significantly limit consumer access to important retirement savings products such as annuities. For the following reasons, we urge the DOL to withdraw the Proposal in its entirety.

Retirees Rely on Annuities for Financial Certainty

Consumers across the country depend on retirement savings vehicles like annuities for financial certainty. In 2024, the largest number of Americans in history will turn age 65 and for the first time, the majority of Americans turning 65 do not have pensions and are therefore self-funding their retirement through 401(k)s, other employer plans, and IRAs. Amidst volatile financial markets and increased costs of living, however, many Americans are concerned about outliving their retirement savings. With traditional pensions no longer being the norm, annuities are empowering millions of Americans to save for their future by creating their own streams of guaranteed lifetime income.

According to a Greenwald Research survey, 71% of middle-income Americans view the guaranteed lifetime income from annuities as valuable and a majority also expressed strong interest in these products. With the median household income of annuity owners between $63,000 and $76,000 per year, annuities are a middle-income product. This proposal would impede the ability of middle-income Americans to access these savings vehicles. Before the Department even considers regulatory action in this area, it should carefully assess the impacts of the Proposal on access to various types of annuities for American retirement savers.

The Proposal Will Harm Low and Middle-Income Savers

This proposal would harm consumers by denying them access to appropriate financial planning and upending the market for life and annuity products. Prior to the DOL's 2016 fiduciary rule being struck down, it caused more than 10 million American workers' retirement accounts (totaling $900 billion in savings) to lose access to professional financial guidance. A 2021 Quantria Strategies study estimates that reinstatement of the 2016 fiduciary-only approach would:

(a) reduce the projected accumulated retirement savings of 2.7 million individuals with incomes below $100,000 by approximately $140 billion over 10 years; and
(b) level the most adverse effects on Black and Hispanic savers, reducing projected accumulated IRA savings by approximately 20% over 10 years and contributing to an approximately 20% increase in the wealth gap attributable to IRAs for these individuals.

Based on this rigorous analysis, it is clear that this proposal would directly harm savers who rely on financial professionals in their own communities, as well as small, mid-size, and large employers seeking to improve the financial security of their workers.

The Proposal Incorrectly Fails to Distinguish Fiduciary Investment Advice from Product Sales

Consumers access annuities and other retirement income solutions based on recommendations from financial professionals. Brokers and agents who recommend annuities have historically been viewed as engaging in traditional sales and marketing practices. In contrast, fiduciaries offer long-term advisory services for which they typically charge ongoing fees and impose account minimums that moderate-income savers cannot afford. In overturning the DOL's flawed 2016 fiduciary rule, the Fifth Circuit Court of Appeals opined that "[w]hen enacting ERISA, Congress was well aware of the distinction… between investment advisers, who were considered fiduciaries, and stockbrokers and insurance agents, who generally assumed no such status in selling products to their clients. The Fiduciary Rule improperly dispenses with this distinction."[1] This proposal, by again rejecting the "purported dichotomy between a mere 'sales' recommendation to a counterparty, on the one hand, and advice, on the other, in the context of the retail market for investment products"[2] is inconsistent with the Fifth Circuit opinion.

The Proposal Ignores the Strong State Insurance Regulatory System

Moreover, the Proposal ignores the strong and effective leadership by the National Association of Insurance Commissioners (the "NAIC"). In 1945, Congress gave the states the responsibility to regulate all insurance transactions, including annuities. Since 2003, state insurance regulators have overseen the sale of annuities to ensure products sold to consumers are suitable for them, based on reviews of their needs. The NAIC Suitability in Annuity Transactions Model Regulation (#275) serves as a basis for this regulatory framework. Congress reconfirmed the states' regulatory responsibility over annuities in the 2010 Dodd-Frank Act, and again in 2020.

State regulators across the country are already protecting consumers against conflicts of interest and doing so by also safeguarding consumer access to retirement security options. Since 2020, with broad bipartisan support from state legislators, governors, and insurance commissioners, 41 states have enacted the NAIC's best interest enhancements to the Suitability in Annuity Transactions Regulation. This represents 77.6% of American consumers who are covered by enhanced consumer protections while maintaining access to retirement options. The renewed push by the DOL to change the rules for retirement savers is a mistake that will cut off retirement options – despite the realities of the retirement savings gap – and build a barrier to financial inclusion.

Based on the foregoing, we oppose the proposed regulation and strongly urge the DOL to withdraw the Proposal.

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[1] Chamber of Commerce v. United States Department of Labor, 885 F.3d 360, 372 (5th Cir. 2018).
[2] 88 FR 75907 (Nov. 3, 2023).

Thank you for the opportunity to provide comments.

Respectfully submitted,

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