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Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: RIN 1210-AC02 – Definition of Fiduciary
Proposed Amendment to PTE 2020-02
Proposed Amendment to PTE 84-24
Application No. D-12094 – Proposed Amendments to PTE 75-1, 77-4, 80-83, 83-1, 86-128

Mutual of Omaha Insurance Company and its affiliates (collectively, "Mutual of Omaha") are grateful for the opportunity to provide comments on the "Retirement Security Rule: Definition of Fiduciary" as proposed by the Department of Labor (the "Department"). We appreciate the time and resources invested by the Department in working toward a better future for retirement savers.

Mutual of Omaha offers a diversified line of individual and group life, health, annuity, retirement, investment and accident insurance products nationwide. As a mutual company, we are owned by our policyholders, which enables us to prioritize our customers' long-term insurance and financial needs. Our organization emphasizes providing our customers with products and solutions that empower their financial security and allow them to reach their financial goals.

Following review of this proposal and consultation with internal subject matter experts, Mutual of Omaha finds that the Department has not provided sufficient guidance as to how it intends companies like ours to implement these proposed rules.

We do not believe it is the Department's intent is to curb savers' options and limit interactions with insurance and other financial professionals, however, that is the result we anticipate from the current version of this rule. If the Department hopes to maintain a competitive market for retirement vehicles with robust saving options for Americans at all income levels, more conscientious rulemaking will be needed.

If the proposed rule remains in its current form, Mutual of Omaha's customers would be impacted by the difficulty created in distinguishing between sales, education and fiduciary advice. Customers with straightforward questions about the products they own or would like to purchase could face delays in response or unsatisfactory answers while insurance companies' associates assess whether the reasonable perception of the consumer and circumstances of the interaction warrant an established fiduciary relationship. By basing the distinction between sales, education and advice on a facts and circumstances test, companies like ours could face difficulty in building appropriate policies and procedures or effectively training our associates to meet a set of standards that organizations like ours cannot elucidate. Ultimately, we anticipate that consumers will face unneeded frustration and inefficiencies in their retirement saving activities.

One of the products specifically listed under this proposed rule that Mutual of Omaha offers to consumers is the fixed indexed annuity (FIA). Annuities (including FIA), provide guaranteed payments over a specific time period that is determined by the consumer. Americans turn to annuities to provide monthly pension-like income in retirement. Annuities are insurance products that provide guaranteed income throughout retirement. There are costs associated with this type of benefit, and retirement savers are buying financial security when they purchase annuities.

Mutual of Omaha offers annuities in markets regulated by both state regulators and the Financial Industry Regulatory Authority, giving us insight into how different types of products and producers can be effectively regulated. Insurance regulators have existing tools that protect consumers against conflicts of interest and ensure that consumers have access to retirement savings options. The established state regulatory structure aligns with federal regulatory rules adopted by the SEC's Regulation Best Interest of 2019. Existing regulatory schemes already appropriately address marketing and sales concerns.

Congress clearly seeks to expand retirement options for Americans, as demonstrated by the recent passage of the SECURE Act 2.0. However, history shows that the Department's past proposals imposing a fiduciary approach on non-fiduciary transactional sales would have reduced Americans' access to savings options had they been fully implemented. A Deloitte study on the Department's 2016 rule showed that the rule resulted in 10 million American workers losing access to professional financial guidance. Further, a Quantria Strategies study found that the 2016 regulation would have reduced the projected accumulated retirement savings of 2.7 million individuals, comprised of American workers with incomes below $100,000, by approximately $140 billion over 10 years. It is unclear why the Department is attempting to put restrictions on the retirement savings market that will result in fewer options for consumers who are now consistently satisfied with these types of insurance products.

Along with redesign of annuity products resulting from this rule, we expect that companies like Mutual of Omaha will have to assess many of the dozens of insurance products they offer. As a result of this process, some products may be deemed by companies to no longer be viable choices to offer consumers due to onerous fiduciary agreement requirements. If this is the case, customers will immediately face a decrease in retirement savings options despite their existing satisfaction with these products.

Mutual of Omaha would also like to note the potential impact to consumers due to changes to the relationships between insurance carriers and their affiliated agents and brokers. Unprecedented new requirements around reporting and supervision of independent agents' activity will negatively affect those agents' ability to offer their customers the variety and range of products they are able to offer under current regulations. Due to an overwhelming number of new requirements placed on agents, customers will likely lose access to the variety of options and resources they now enjoy. Agents will face difficulty in complying with and reporting to multiple insurance carriers, and agents' offerings will shrink to the detriment of savers.

Further, the Department's proposed changes under PTE 84-24 and PTE 2020-02 represent a radical shift in the design of compensation structure for insurance agents. This rule asks insurance agents to accept more liability risk in exchange for less compensation. Instead of overhauling their business activities, we anticipate that many agents could exit the market altogether, leaving consumers with less and less access to retirement saving products. Insurers have structured compensation for agents selling annuities and other similar products in such a way that these agents fully understand the benefits of the product and are able to market and sell them to customers appropriately. Some agents' compensation packages include training and education on the products consumers seek. The proposed changes to agents' compensation structure would likely reduce or eliminate important tools available to savers to ensure their financial futures.

Finally, Mutual of Omaha finds that the abbreviated comment period does not provide stakeholders like us with a meaningful opportunity to participate in the rulemaking process. Further, the 60-day implementation period provided by the agency leaves inadequate time to update operational processes and systems should a final rule be issued. Sixty days is simply not enough time for disambiguation of the rule to identify what products and distribution channels require updates. Beyond those identification efforts, organizations will need to evaluate existing compensation and incentive arrangements to determine where adjustments may be needed, and determine compliance solutions for all agents, brokers and any other "Investment Advice Fiduciaries".

If withdrawal of this rule is not an option, we would request an implementation timeline of no less than 18 months. The far-reaching nature of this proposed rule and the restructuring it will require of the industry demand an effective date that reflects the extensive changes that will need to be implemented. Without an extended effective date, consumers will soon face limited options in the financial advice and retirement savings spaces.

We fear that this proposal threatens harm to consumers who rely on their community insurance agents and the retirement savings products they provide. It eliminates benefit options for small, medium and large employers who have traditionally been able to offer annuities and other insurance products to their workers and retirees. A more fulsome discussion of the numerous legal and policy reasons why we remain deeply concerned about the proposed regulation can be found in the comprehensive comment letters submitted by the American Council of Life Insurers and the Insurance Coalition, with which we wholeheartedly concur. Mutual of Omaha thanks you for your attention to this matter.

Sincerely,
James P. Nolan

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Vice President, Communications and Federal Government Affairs
Mutual of Omaha