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August 3, 2017

The Company You Keep®

Submitted via email: EBSA.FiduciaryRuleExamination@dol.gov
Subject: RIN 1210-AB82

Office of Exemption Determinations, EBSA
(Attention: D-11933)
U.S. Department of Labor
200 Constitution Avenue NW
Suite 400
Washington, DC 20210

Re: Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions

Ladies and Gentlemen:

New York Life Insurance Company ("New York Life") appreciates the opportunity to comment on the Department of Labor's ("Department") Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions ("RFI"). While the RFI covers a variety of issues, we have focused our comments below on the Department's suggestion of a streamlined exemption for fee-based annuities, given New York Life's leading role and expertise in the guaranteed lifetime income annuity market. We have engaged on other issues through our various trade associations.

As the Department conducts its review of the fiduciary rule and evaluates whether to create a streamlined exemption for fee-based annuities, we would urge that the Department recognize that neither fee-based compensation structures nor commissions are inherently "good" or "bad". Both compensation structures may be in a client's best interest depending on the circumstances of the advice and products involved.

Importantly, the use of commissions to compensate agents for transactions involving annuities, particularly guaranteed lifetime income annuities, generally is in a client's best interest and is the most appropriate compensation structure given the design of the product. We therefore urge the Department not to create a streamlined exemption that incentivizes the use of a fee-based compensation structure over commissions for transactions involving annuities.

I. ABOUT NEW YORK LIFE

New York Life, founded in 1845, is the nation's largest mutual life insurance company. As a mutual company, New York Life has no stockholders. Our interests are aligned with those of our policyholders, who are our only constituency. We provide life insurance, annuity and investment products to more than 7 million individuals and families.

New York Life has the highest possible financial strength ratings currently awarded to any life insurer from all four major credit rating agencies.¹ Our proprietary insurance and annuity products are backed by our financial strength and offered primarily through a network of 12,000 licensed agents.

New York Life is the leading provider of retail guaranteed lifetime income products, which enable individuals to use a portion of their retirement assets to guarantee a stream of income for life. Specifically, New York Life is the industry leader in sales of both immediate annuities, in which the stream of guaranteed income begins as soon as the product is purchased, as well as deferred income annuities, in which the income stream begins at a designated date in the future (e.g., age 70).² In 2016, New York Life paid out \$1.37 billion in “paychecks” (annuity benefits) to more than 160,000 payees.

While New York Life serves Americans across the financial spectrum, our focus is the middle market. Approximately 50 percent of customers who purchased annuities from New York Life's agents in 2016 had annual household incomes of less than \$70,000 a year, and about 75 percent had annual household incomes of less than \$110,000 a year. Additionally, half of the annuities sold by New York Life agents had premiums of \$50,000 or less.

II. NEW YORK LIFE'S ENGAGEMENT ON THE FIDUCIARY RULE

New York Life has engaged with the Department throughout the development of the fiduciary rule, including by submitting a comment letter in July 2015 in response to the Department's notice of proposed rulemaking.³ We appreciate the opportunity to continue our engagement by responding to the RFI.

¹ A.M. Best (A++), Fitch (AAA), Moody's Investors Service (Aaa), Standard & Poor's & (AA+). Source: Individual independent rating agency commentary as of August 9, 2016.

² In 2016, New York Life was the leading seller of single premium immediate annuities (SPIAs) with a 27% market share, and the leading seller of deferred income annuities with a 33% market share. Source: LIMRA, U.S. Individual Annuity Sales Survey, Participants Report, Fixed Immediate and Deferred Income Annuities, Fourth Quarter 2016 results. (Fixed Immediate include Fixed Period Annuities.) Annuities are primarily issued by New York Life Insurance and Annuity Corporation, a wholly-owned subsidiary of New York Life Insurance Company.

³ Available at <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00597.pdf>

The primary focus of our engagement with DOL has been on three key issues:

- (1) The fiduciary rule should not create a bias for fee-based advice. As discussed in more detail in Section III, below, fee-based compensation is not inherently more consumer-friendly than commission-based compensation. For many annuity transactions, particularly those involving guaranteed lifetime income annuities, fee-based compensation may not be in the best interest of consumers.
- (2) The fiduciary rule should not create a bias against products manufactured and distributed by the same company (i.e., “proprietary products”). As a mutual company focused on the long-term needs of our policyholders, New York Life’s ability to sell proprietary products backed by our financial strength and through our 12,000 trained career agents is critical to serving the best interests of our policyholders.
- (3) The fiduciary rule should not create a presumption that the lowest cost product is always the “best” product, as the lowest priced option is often not in the best interest of a consumer, particularly when the product under consideration provides a long-term guarantee.

III. STREAMLINED EXEMPTION FOR FEE-BASED ANNUITIES

Question 8 of the RFI asks questions related to the structure and viability of a streamlined exemption for fee-based annuities. We appreciate the Department’s attention to annuities, as they serve an important need for retirees. Specifically, as defined benefit plans become less common and retirees increasingly shoulder the burden of making sure they do not outlive their assets, guaranteed lifetime income annuities allow retirees to effectively create their own “pension.”

As noted above, fee-based compensation is not inherently better for consumers purchasing annuities, particularly guaranteed lifetime income annuities. For the reasons outlined below, we would urge the Department not to create a streamlined exemption that incentivizes fee-based annuities over those sold under a commission-based model.

A. Fee-Based Compensation and the Structure of Lifetime Income Annuities

A fee-based compensation structure generally is not well-suited for the design of annuities, particularly guaranteed lifetime income annuities. First, when an individual purchases a guaranteed lifetime income annuity, the individual provides a single payment and in return receives a guaranteed stream of income (i.e., a check for the same amount of money each month) for as long as he or she lives. By design, guaranteed lifetime income products achieve a customer’s objective for a guaranteed stream of income regardless of future financial scenarios and, therefore, do not require substantial ongoing support from an agent. As such, depending on the circumstances,

it may not be appropriate for an agent to charge an ongoing fee. In contrast, an upfront commission that compensates the agent for advice and education provided before the sale is a compensation structure well-suited to guaranteed lifetime income annuities.

Second, guaranteed lifetime income annuities are designed to provide peace of mind to customers by helping them spend down assets in a way that ensures them steady income for as long as they live. The fact that a guaranteed lifetime income annuity is effectively a “declining asset” also makes it a poor fit for a fee-based compensation structure, as the assets on which the fee would be assessed would intentionally be decreasing in value over time.

Third, commissions are a more transparent, straightforward compensation structure for guaranteed lifetime income annuities. A customer provides a premium in exchange for a pre-determined stream of income. There are no additional fees after the premium is paid and no opportunity for confusion.

B. Fee-Based Annuities May Not Be in a Consumer’s Best Interest

In some cases, the cost to consumers of a fee-based model exceeds the cost of a commission. Typical commissions on annuities are approximately 4%. This translates to approximately 0.33% annually when amortized over the average duration of the product. This commission-based model is therefore often much more economical and appropriate for annuities than an asset-based model, which typically involves an annual fee of 1% of assets.

For example, an individual would pay an up-front commission of \$2,000 for a \$50,000 guaranteed lifetime income annuity that provides a guaranteed annual income of over \$3,000 for approximately 20 years. In contrast, the same individual could pay \$8,500 – \$10,000 (\$425 – \$500 each year) to a fee-based adviser for the same \$50,000 annuity over that same 20-year period.⁴ As such, encouraging the use of fee-based compensation could actually be harmful to consumers in some circumstances, particularly when the product involved is a guaranteed lifetime income annuity.

C. Commission-Based Compensation More Effective in Promoting Access to Smaller Investors

Importantly, a commission-based compensation structure is also more effective in ensuring that smaller investors have access to advice related to guaranteed lifetime income annuities. As noted above, guaranteed lifetime income annuities provide a guaranteed stream of income regardless of future financial scenarios and, therefore, do not require substantial ongoing support from an agent. As such, as is appropriate, the commission is provided up-front, at the time when the agent performs most of the work related to the product.

⁴ The commission fee would range from \$8,500 – \$10,000 depending on whether the fee is determined based on the original premium paid or based on the declining value of the annuity asset as income is paid out over time.

A regulatory framework, such as a streamlined exemption for fee-based annuities, which incentivizes the payment of a level fee throughout the duration of a guaranteed lifetime income product, would be harmful to those savers with small balances. The immediate compensation provided to an agent would provide such a small incentive that it would make it unlikely that agents would be willing to devote the often extensive time and resources required to effectively provide guidance regarding guaranteed lifetime income products. A regulatory framework incentivizing fee-based compensation structures also could have the unintended consequence of reducing the number of new financial professionals available to provide advice, as it could make it more difficult for newer financial professionals to support themselves during their early years in the business.

D. Market Data Reflects Problems with Fee-Based Annuities

As described above, there are several reasons why a fee-based structure may not be in the best interest of consumers, particularly with respect to guaranteed lifetime income annuities. Current market data also reflects the fact that fee-based annuities represent a de minimis part of the market. Fee-based annuities account for 1.8 percent of variable annuity sales and less than 0.15 percent of fixed indexed annuity sales.⁵ The few fee-based annuities that are sold are generally provided to investors with large account balances, rather than smaller savers. We are not aware of any fee-based guaranteed lifetime income annuities offered in the marketplace today.

IV. CONCLUSION

The last 40 years have brought significant changes in how Americans pay for retirement. At the same time, market forces have created options enabling retirees to replicate the guaranteed income that traditional pensions used to provide. As the Department considers potential changes to the fiduciary rule and related PTEs, it is important that its policies reflect the fact that for many annuities, and particularly guaranteed lifetime income annuities, fee-based compensation structures may not be in the best interest of consumers.

Thank you for the opportunity to comment on the questions raised by the Department in the RFI. If you have any questions or need additional information regarding this submission, please feel to contact me at (212) 576-5353.

Sincerely,



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New York Life Insurance Company

⁵ LIMRA U.S. Individual Annuities 1st Quarter 2017 Report.