



Will H. Fuller  
President – Annuity Solutions, Lincoln Financial  
Distributors & Lincoln Financial Network

Lincoln National Corporation  
150 N. Radnor-Chester Road  
Radnor, PA 19087-5221  
Phone: 484-583-6044  
Will.Fuller@LFG.com

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**Submitted Electronically**

Office of the Secretary of the Commonwealth  
Attn: Proposed Regulations – Fiduciary Conduct Standard  
Massachusetts Securities Division  
One Ashburton Place, Room 1701  
Boston, MA 02108

**Re: Comments of Lincoln Financial Group on Proposed Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers and Investment Adviser Representatives**

Dear Secretary Galvin:

Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates (collectively, “Lincoln”).<sup>1</sup> This letter is in response to the request by the Massachusetts Securities Division (the “Division”) of the Office of the Secretary of the Commonwealth for comments on the Proposed Fiduciary Conduct Standard for Broker-dealers, Agents, Investment Advisers and Investment Adviser Representatives dated December 13, 2019 (the “Proposal”).

Lincoln’s comments are primarily focused on variable annuities and insurance products, including those that provide guaranteed lifetime income.<sup>2</sup> Lincoln believes that consumers should always receive advice that is in their best interest and has long supported enhancements to the standard of conduct applicable to broker-dealers. Unfortunately, the Division’s Proposal to develop yet another standard of care will have an adverse impact on Massachusetts consumers.

**Preserve access to advice and choice as to commissions, fees and products**

The Securities and Exchange Commission (“SEC”) increased consumer protections and enhanced the standard of care for broker-dealers when it implemented Regulation Best Interest (“Reg BI”). The SEC’s approach acknowledges the benefits of the broker-dealer model and provides consumers with choice as to whether to pay commissions or fees for advice. For

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<sup>1</sup> Lincoln currently has 298 employees that are Massachusetts residents out of a total of approximately 11,000 nationwide.

<sup>2</sup> Lincoln also supports the positions of the American Council of Life Insurers and the Insured Retirement Institute on the Proposal, as outlined in their respective comment letters.

long-term “buy and hold” investments, like variable annuities with lifetime income guarantees, consumers often pay for advice with commissions, which can be less costly over the life of the annuity contract than paying annual fees.

Unfortunately, unlike Reg BI, the Division’s Proposal was rushed and does not strike the right balance. If finalized, it will adversely impact these “buy and hold” consumers which it is trying to protect. As the industry witnessed with the implementation of the Department of Labor’s (“DOL”) fiduciary rule, there was a significant shift to fee-based products, even when commission-based products would be less costly to the consumer. Lincoln encourages the Division to learn from the DOL fiduciary rule and amend the Proposal to ensure that commissionable products, including annuities that offer guaranteed lifetime income, are still available to consumers.

### **The Massachusetts Insurance Commissioner is the regulator of insurance products**

The Division should revise to the Proposal to exclude insurance products, including annuities. The Massachusetts legislature vested jurisdiction over insurance products, including annuity contracts, in the Division of Insurance (“DOI”), not the Division.<sup>3</sup> If the Division proceeds with the Proposal without deleting “insurance products,” the result would be competing and inconsistent regulations governing annuity sales in Massachusetts. This would increase consumer confusion and undercut the Division’s efforts to improve how financial advice is provided. It would also mean that insurance producers in Massachusetts who sell variable annuities would be regulated not only by the DOI, the SEC and FINRA, but also by the Division. Jurisdictional oversight of annuities and insurance products properly resides with the Massachusetts Insurance Commissioner, not the Division.

### **Harmonize the standard of care and related compliance requirements**

Reg BI will meaningfully heighten the obligations of broker-dealers and their registered representatives to make recommendations that are in the best interest of their customers. Reg BI also meaningfully enhances disclosure obligations, addresses conflicts of interest, and requires more robust compliance programs.<sup>4</sup> In addition, the National Association of Insurance

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<sup>3</sup> The Massachusetts Insurance Law states that insurance and annuity contracts, including variable contracts, and the “negotiation, solicitation, sale or transaction thereof by any person” shall not be subject to the provisions of the Massachusetts Uniform Securities Act (Chapter 110A). See Chapter 175 M.G.L. § 3. Consistent with the Insurance Law, the Massachusetts Uniform Securities Act excludes insurance and annuity contracts from the definition of “security.” See Chapter 110A M.G.L. § 401(k) (“‘Security’ does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period”).

<sup>4</sup> As SEC Chairman Jay Clayton has stated publicly, in light of these changes, the duty owed by broker-dealers under Reg BI will be substantially the same as the fiduciary duty owed by registered investment advisers. See, e.g., Panel Discussion between Jay Clayton, SEC Chairman, and Robert Cook, FINRA’s President and CEO, at FINRA’s 2018 Annual Conference, May 22, 2018.

Commissioners (“NAIC”) is nearing completion of amendments to implement a heightened best interest standard in its model regulation governing recommendations of annuities (the “NAIC Model”) and has worked carefully to develop an enhanced standard of care that is aligned with Reg BI. This alignment is critical, as the NAIC has recognized that having inconsistent and conflicting regulations adversely impacts consumers and increases consumer confusion.

The Massachusetts Insurance Commissioner is a member of the NAIC, and Massachusetts’ existing annuity suitability regulation is based on the current version of the NAIC Model. Interestingly, in a comment letter dated July 26, 2019, the Massachusetts Insurance Commissioner expressed concern that the Division’s work on a new standard of care “may not be consistent with ongoing efforts to update national standards for recommending annuity products to consumers.” He also stated that until state insurance regulators can update their regulations to be consistent with the enhanced NAIC Model, “insurance companies and producers should not be subjected to any new rules or standards that impact annuity transactions.”

We agree and respectfully request that the DOI lead any efforts to amend Massachusetts’ regulations governing annuity sales. This will enable the DOI to align the Massachusetts regulation with the enhanced national standard in the NAIC Model. In addition, Lincoln recommends that the Division postpone finalizing the Proposal until the Division can do a full analysis of the impact of Reg BI after it becomes effective. Lincoln is confident that a post mortem review of Reg BI will invalidate the Division’s initial assessment that consumers will not receive advice that is in their best interest. A delay in implementation can avoid a “shoot first, aim second” result.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Will H. Fuller". The signature is written in a cursive, flowing style.

Will H. Fuller  
President, Lincoln Financial Group Annuity Solutions,  
Lincoln Financial Distributors and Lincoln Financial Network