

owner, pre-designated joint owner, or annuitant is over age 76.

19. For contract owners who elect the Bonus Offer or the EGMDDB Offer, there will be no additional charges or any increase in existing charges other than the imposition of the new surrender charge.

20. Contract owners who elect the EGMDDB Offer receive the EGMDDB at no additional cost on the date the Offer is accepted. If the contract owner had previously elected the EGMDDB when he or she purchased the contract (or when the EGMDDB became available in his or her state) and is thus paying for the EGMDDB, under the EGMDDB Offer, if elected, the 0.15% charge for the EGMDDB will be discontinued as of the date the Offer is accepted, and the death benefit at all times after the enhancement will in no event be less than the death benefit that would have been payable if the Enhancement Offer had not been accepted.

21. Contract owners may cancel the elected option for any reason within ten days (in some states longer) of the date the rider adding the option was received. Upon cancellation, Lincoln Life will waive the new surrender charge and re-establish the prior existing surrender charges, if any, as of the date of the receipt of the cancellation. The contract owner assumes the investment risk on the contract value during this period. If the Bonus Offer is cancelled according to the Right to Examine provision, the bonus credits will be revoked; however, Lincoln Life will assume the risk of investment loss on the bonus credits. Lincoln Life will also re-credit the mortality and expense risk and administrative charges proportionately attributable to the bonus credits. The contract owner will be put back into the same position as if he or she had never elected the Bonus Offer. Lincoln Life will recapture the bonus credit only upon the exercise of the free look privilege.

22. Regarding the implementation of the Offers, Lincoln proposes to make the offers directly, by providing eligible contract owners with information about the offers through an "Offering Document" sent from the Home Office. Contract owners will be directed to Lincoln Life or their registered representatives for further information. Contract owners who express an interest in the Offers will be given a prospectus.

23. Registered representatives who are responsible for a contract owner accepting the Bonus Offer or the EGMDDB Offer will be paid a commission. The commission is less than what the registered representative

would receive on the sale of a new Legacy contract.

24. The Offering Document will advise such contract owners that the Offers have been designed for those contract owners who intend to continue to hold their contracts as long-term investments. An explanation of the terms of each offer will be provided. The Offering Document will state that the offers are not intended for all contract owners, and that they are especially not appropriate for any contract owner who anticipates surrendering more than a portion of his or her contract in excess of the free withdrawal amount (greater of 10% of the contract value or 10% of purchase payments) within the surrender charge period. In this regard, the Offering Document will encourage contract owners to carefully evaluate their personal financial situation when deciding whether to accept or reject the Offers. In addition, the Offering Document will explain how a contract owner who elects to participate in one of the offers may avoid the applicable surrender charge if no more than the annual free withdrawal amount (10% of purchase payments) is surrendered and any subsequent purchase payments are maintained until the expiration of the applicable surrender charge period. In this regard, the Offering Document will state in clear plain English that if the amended contract is surrendered during the new surrender charge period: (a) The contract owner will pay surrender charges which may be substantial, that he or she would not have paid if the offer had not been accepted; and (b) a contract owner may be worse off than if he or she had rejected the offer. The Offering Document also will state that if the contract is owned by three or more persons and an owner who is not the named contract owner or a pre-designated joint owner dies during the new surrender period, the remaining contract owners could be worse off having accepted the Enhancement Offer because a new surrender charge will apply.

Applicants' Legal Analysis

1. The purpose of Section 11 is to prevent the practice of inducing exchanges solely for the purpose of exacting additional selling charges. While the sales representatives will receive a commission and there will be imposed a surrender charge, Applicants argue that based on the foregoing, one should readily conclude that the sole purpose of the Offer is not to exact selling charges but to offer significant benefits to the contract owners as

inducement for them to remain contract owners of Lincoln Life.

2. Section 11(a) of the Act makes it unlawful for any registered open-end company, or any principal underwriter for such company, to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with Commission rules adopted under Section 11.

3. Section 11(c) of the Act, in pertinent part, requires, in effect, that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company be approved by the Commission or satisfy applicable rules adopted under Section 11, regardless of the basis of the exchange.

4. The Annuity Accounts are registered under the Act as unit investment trusts. Thus, the exchange offer constitutes an offer of exchange of two securities, each of which is offered by a registered unit investment trust. While Applicants would argue that the enhancement offer on its face is not subject to Section 11 because it does not involve the offer of exchange of two securities, nonetheless, it would appear that it is the Commission's current position that offers such as the Enhancement Offer do fall within the ambit of Section 11.

5. According to the Commission, Congress enacted Section 11 to prevent "switching," *i.e.*, "the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges." According to the Commission, "[I]nvestors in 'fixed trusts,' now known as unit investment trusts ('UIT'), were found to be particularly vulnerable to switching operations. In order to earn another sales commission, a UIT sponsor would often pressure unit holders into exchanging their units for those of another of the sponsor's trusts."

6. Section 11(c) of the Act requires Commission approval (by order or by rule) of any exchange, regardless of its basis, involving securities issued by a unit investment trust because investors in unit investment trusts were found by Congress to be particularly vulnerable to switching transactions. Applicants believe that the potential for harm to investors perceived in switching by