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

Office of Exemption Determinations
Employee Benefits Security Administration
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U.S. Department of Labor
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RE: Additional Comments Related to the Department of Labor's Proposed Regulatory Package on the Definition of the Term "Fiduciary" (RIN 1210-AB32)

Dear Sir or Madam:

The Principal Financial Group® appreciates the opportunity to provide additional comments on the following United States Department of Labor's (Department) proposals: (1) Definition of the Term "Fiduciary" under the Employee Retirement Security Income Act of 1974 ("ERISA"); Conflict of Interest Rule—Retirement Investment Advice,[1] (2) Best Interest Contract Exemption (the "BIC Exemption"),[2] (3) Principal Transaction Exemption,[3] and (4) related amendments to four existing

[1] DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Definition of Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice* [RIN: 1210-AB32], 80 Fed. Reg. 21928 (Apr. 20, 2015) (the "Re-Proposing Release"), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08831.pdf.

[2] DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Best Interest Contract Exemption*, Application No. D-11712 [ZRIN: 1210-ZA25], 80 Fed. Reg. 21960 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08832.pdf.

[3] DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Class Exemption for Principal Transactions in Certain Debt Securities between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs*, Application No. D-11713 [ZRIN: 1210-ZA25], 80 Fed. Reg. 21989 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08833.pdf.

prohibited transaction class exemptions[4] (collectively, the "Proposed Rule") in light of both market volatility subsequent to the original comment period as well as testimony at the public hearings held on August 10th through August 13th. Following these events, we feel the comments in our original letter are validated to an even greater extent.

The additional comments we offer for the Department's consideration emphasize two specific elements of the proposal discussed at the hearings; the necessary timeframe for industry to adequately comply with a final regulation and the need for clarification in the rule stating that a "call to action" is necessary to trigger fiduciary advice.

Implementation

As outlined in our original letter, even normal project requirements that address less complex issues take substantially longer than the eight months provided in the Proposed Rule. Given the extraordinary requirements of the Proposed Rule, the Department must consider extending the implementation period to at least 24 months. We offer for the Department's consideration the following additional points that support the need for a longer implementation period.

[4] DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Amendment to Prohibited Transaction Exemption (PTE) 75-1, Part V, Exemptions from Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Broker-Dealers; Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefits Plans and Certain Broker-Dealers, Reporting Dealers and Banks*, Application No. D-11687 [ZRIN: 1210-ZA25] 80 Fed. Reg. 22004 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08836.pdf; DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction Exemption (PTE) 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies and Investment Company Principal Underwriters*, Application No. D-11850 [ZRIN: 1210-ZA25], 80 Fed. Reg. 22010 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08837.pdf; DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction Exemption (PTE) 86-128 for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers; Proposed Amendment to and Proposed Partial Revocation of PTE 75-1, Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks*, Application No. D-11327 [ZRIN: 1210-ZA25], 80 Fed. Reg. 22021 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08838.pdf; and DEP'T OF LABOR, EMPLOYEE BENEFITS SECURITY ADMIN., *Proposed Amendments to Class Exemptions 75-1, 77-4, 80-83 and 83-1*, Application No. D-11820 [ZRIN: 1210-ZA25], 80 Fed. Reg. 22035 (Apr. 20, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08839.pdf.

We note that, for our insurance company business, many of our contracts, including our group contracts used with qualified retirement plan clients, are required to be filed and approved by state insurance departments. Given changes that will be needed to comply with the regulation as proposed, we believe that certain contracts will likely need to be filed with state insurance departments. As part of this process, once a final regulation is published we will need to work with business units, compliance areas, legal counsel, among others to review the requirements and determine which contracts will need to be amended, what changes to make, and then draft any changes before submitting to the state insurance departments. The submission process itself can be lengthy under ordinary circumstances. Many states have unique filing requirements and the state insurance departments are already reviewing numerous filings they consider on an ongoing basis. In addition, a filing is rarely a singular event, and normally requires considerable correspondence back and forth between the insurance company and each state insurance department prior to approval, asking and answering a number of questions. Our experience has been that normal timing to get all 50 states' approval ranges between 9 and 24 months. Although many states will provide approval within nine months, it can take up to two years to get approvals from all 50 states. Although we can legally use a contract once approved in a state, it is not practical to do so until all 50 state approvals are received to prevent confusion among distribution partners, sales and service personnel whose responsibilities cross state lines. We also note that a large volume of state filings from insurance companies in response to the Proposed Rule is certain to cause substantial delays in the filing and approval process.

In addition to state filing requirements, we will also have to address selling agreements between the insurance company and different selling parties, such as insurance agencies, brokerages, and broker/dealers. Conversely, our retail broker/dealer and Registered Investment Adviser will also have to address the hundreds of selling agreements we have in place with the various insurance companies, mutual fund families, alternative investment product sponsors and other Registered Investment Advisers for the products that our affiliated advisors are able to offer to our mutual clients. These will need to be reviewed to ensure that any changes to product

structures still allow the agreements to work. Generally time is required for both negotiation among the parties and for legal resources to draft any changes. Given the widespread nature of the proposed regulation it is very possible that firms will be reviewing their due diligence and will want time for a thorough review. As with the state filing process, we fully anticipate backlogs to develop as all firms are seeking to renegotiate agreements at the same time. Not only will firms be navigating changes that need to be made to comply with the Proposed Rule, they will also be training and answering questions from those they work with to ensure that product changes are understood by all parties.

We note many commenters in the hearings provided input that the eight months transition period is too short of a window. As a whole, these commenters were persons who have a sound knowledge base of how the industry works and the difficulties with implementation for a regulation of this type.

It was of particular interest that even those representing plan sponsors (US Chamber of Commerce[5] and American Benefits Council[6]) mentioned this issue in testimony at the hearings. The current timeframe will not leave much time for plan sponsors to adjust any procedures or to provide notices to participants of the change. Many notices under the 404(a)(5) regulation required a 60 day advance notice to participants. Plan sponsors will need time to draft and distribute communications to their participants so they can't wait for the last minute. That puts further pressure on service providers to read and interpret the requirements, make any necessary changes, provide education and training to our own personnel, and then provide education to plan sponsors. Eight months is simply not enough time given the magnitude of this Proposed Rule.

Given these factors and ones mentioned in our original comment letter we reiterate our recommendation to extend the implementation timeline to at least 24 months.

[5] http://www.dol.gov/ebsa/pdf/1210-AB32-2-HearingTranscript2.pdf p 610
[6] http://www.dol.gov/ebsa/pdf/1210-AB32-2-HearingTranscript4.pdf p 1123

Education

During the hearings, several panelists raised the concern that the Proposed Rule's broadened fiduciary definition, particularly use of the phrase "specifically directed to the advice recipient for consideration" and the broad and subjective nature of the definition of a recommendation, lowers the bar so substantially that many normal-course interactions between individuals and financial advisors and service provider representatives would be considered fiduciary in nature. This could even include casual conversations, where there is no intent to deliver advice.

With over 4,100 employees who are dedicated to supporting retirement plans and individual investors, we share this concern. We have approximately 880 employees and over 1,500 affiliated financial professionals, located across the country, who work directly with small plan sponsors, retirement plan participants, retail investors and financial professionals on a daily basis answering questions, conducting enrollment and education meetings and providing one-on-one financial education to clients at their worksite, at their home or over the phone. These discussions can, and often do, include: providing definitions of general financial and investment concepts, such as risk and return; diversification; dollar cost averaging; compounded return; tax-deferred savings; investment restrictions; fees, or other charges and early withdrawal charges.

While the Proposed Rule's education carve-out supports these "general" concepts, in reality many participants invariably seek to apply these concepts to specific investments made available in their employer's retirement plan. The importance of individuals' ability to access this level of support and assistance is especially important in times of significant market volatility as we have just experienced during August and September of this year. When the stock market has major, negative adjustments, investors want to talk with someone. That could be the financial professional they have worked with for years, or it may be the call center of their plan's service provider.

In the case of our own customer service centers, call volumes recently spiked by 20% over several weeks of the worst volatility. While some investors simply wanted

education regarding what was going on in the market, many sought to "get out of the market." While each situation is different, our financial professionals and customer service representatives seek to remind the caller about saving for the long-term and to discuss goals and the best way to meet those goals. Ultimately, we seek to help the investor set aside the emotion of the moment and to consider all factors in order to make an educated decision. This often includes a review of long term objectives, diversification, and references to the individual's asset allocation, necessitating discussion of the individual investments in that asset allocation.

Based on our reading of the Proposed Rule, these conversations could cause someone to conclude that a suggestion or recommendation was being made with respect to engaging in or refraining from a particular course of action. Without clarity around these types of conversations in the Proposed Rule, call centers could decide to pull back and no longer have these conversations with individuals. Ultimately, in times of high market volatility, many more investors will be apt to succumb to emotion, make bad decisions, and lock in losses. Failing to provide assistance to persons who might react emotionally at such an important time is not in the best interests of that retirement investor, yet it isn't realistic to assign fiduciary responsibility and liability to a salaried call center employee.

We note that during the hearings, in response to panelists' concerns that casual conversations would be deemed fiduciary advice under the Proposed Rule, the Department repeatedly stated that to be considered investment advice, a recommendation must be a "call to action" to invest in a particular investment product or to pursue a particular investment strategy. While some believe this would be helpful, we do not believe the Proposed Rule, as worded, supports this statement, nor do we believe it truly fixes the concern since counselling a retirement investor to "stay the course" during a market correction is in fact a "call to action". Furthermore, encouraging a participant who has experienced a benefit event to stay in their former employer's retirement plan rather than taking a cash withdrawal to spend today or rolling over to a retail option could also be construed as a recommendation to "refrain from taking a

particular course of action." In order to give financial institutions confidence to maintain beneficial and necessary levels of assistance to investors, the Department should reconsider the narrowing of the definition of "education", but should also carefully consider its position on exactly what constitutes a "call to action".

Conclusion

The Principal Financial Group appreciates the opportunity to provide additional comments and observations on the effect of the Proposed Rule. Ultimately, we share the Department's objective of improving retirement savings and of better positioning Americans to meet their retirement income needs. We believe this can be accomplished in a meaningful way, but much more simply than is set forth in the Proposed Rule. Advice can be provided in a manner that is in the best interest of the recipient, but without threatening basic services needed by retirement investors, without undue burden and cost introduced into the system, and without unrealistic implementation timelines. We look forward to working further with the Department on this very important topic, and urge the Department to work collaboratively with all interested parties to ensure this is done right. We cannot afford to jeopardize the savings of millions of Americans with hastily implemented rules that don't consider all the repercussions.

Sincerely,

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