



September 15, 2017

Filed Electronically

The Office of Exemption Determinations  
Employee Benefits Security Administration  
Attention: D-11712, 11713, 11850  
U.S. Department of Labor  
200 Constitution Avenue, N.W., Suite 400  
Washington, DC 20210

**Re: RIN 1210-AB82**

To Whom It May Concern:

Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates (collectively, "Lincoln"). This letter is in response to the Department of Labor's (the "Department's") proposal to extend the applicability date for certain provisions of PTE 2016-01 (the Best Interest Contract Exemption or "BICE"); PTE 2016-02; and the 2016 amendments to PTE 84-24 by eighteen months, from January 1, 2018 until July 1, 2019 (the "proposed extension").

Lincoln strongly supports the proposed extension for the reasons articulated in our March 17, 2017 and July 14, 2017 comment letters. They are attached for ease of reference.

In the preamble to the proposed extension, the Department states that it anticipates that it will propose new preferential "streamlined" exemptions that are based on "recent innovations in the financial services industry." We believe this is referring to fee-oriented products and compensation structures, such as "T-shares", "clean shares" and fee-based annuities. We reiterate our strong disagreement with this approach, which favors fee-based compensation structures even though commissions are often more appropriate for consumers, particularly when consumers are purchasing guaranteed lifetime income. We continue to urge the Department to avoid this approach and instead hold fee-based compensation and commissions to the same standard and process, so that guaranteed lifetime income products can be made available to consumers on a level playing field with other retirement products and services.

**Dennis R. Glass**  
*President & Chief Executive Officer*

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Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Dennis R. Glass".

Dennis R. Glass  
President and Chief Executive Officer  
Lincoln Financial Group

July 14, 2017

**Dennis R. Glass**  
*President & Chief Executive Officer*

Filed Electronically

The Office of Exemption Determinations  
Employee Benefits Security Administration  
Attention: D-11933  
U.S. Department of Labor  
200 Constitution Avenue, N.W., Suite 400  
Washington, DC 20210

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**Re: RIN 1210-AB82**

To Whom It May Concern:

Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates (collectively, “Lincoln”). This letter responds to question 1 of the Department of Labor’s (the “Department’s”) Request for Information (“RFI”), asking whether the Department should extend the January 1, 2018 applicability date of certain provisions of the fiduciary regulation and related new and amended prohibited transaction exemptions (the “fiduciary rule”). **Lincoln strongly supports this extension.**

The Department has indicated clearly, through this current RFI, its March 2 request for comment, as well as other public statements by Department officials,<sup>1</sup> that it is actively contemplating changes to this rule. In the meantime, the fiduciary rule’s requirement that advisors and firms act in their customers’ best interest, a concept we have always agreed with, went into effect on June 9. Consumers are already benefiting from this change. The industry has benefited too, as the passing of this milestone date removed some destabilizing uncertainty and allowed firms to finalize business model decisions and communicate them to advisors and customers. An extension of the January 1, 2018 applicability date would continue this relative stability while the Department contemplates further changes to the rule, and would allow time for financial institutions to implement the rule as eventually revised in an orderly way, thereby making the transition to complete implementation more cost-effective and a more positive experience for consumers. In addition, as we are sure the Department is hearing from commenters across the industry, financial institutions need to start preparing now for the parts of the rule scheduled to go into effect on January 1, 2018. This preparation includes large and expensive information technology re-

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<sup>1</sup> For example, in a May 22 opinion piece for the Wall Street Journal, Secretary of Labor Alexander Acosta wrote “Trust in Americans’ ability to decide what is best for them and their families leads us to the conclusion that we should seek public comment on how to revise this rule.” In addition, Secretary Acosta and SEC chair Jay Clayton have publicly signaled an intention to work together on potential revisions to the rule. [See](http://www.ignites.com) [ignites.com](http://www.ignites.com) (“SEC, DOL Vow to Cooperate in Fiduciary Rule Review”), June 28, 2017.

design and builds, as well as comprehensive training and communication for advisors and customers. To require the industry to engage in this extensive and costly preparation for requirements that could very well change does not make sense under any cost-benefit analysis. It will only confuse customers, and generate unnecessary costs to cover the building and then dismantling or altering of processes in response to the changes, costs that will inevitably be passed along to consumers.

As we will explain more fully in a subsequent comment letter, while Lincoln has always agreed with the Department's goal of ensuring that retirement savers receive advice that is in their best interest, there are aspects of the fiduciary rule that we believe run counter to this goal. In particular, we strongly disagree with the aspects of the rule that favor fee-based compensation over commissions, even though commissions can be and often are in a customer's best interest. This bias improperly encourages firms and advisors to favor fee-based advice, not because it is better for the customer, but because it allows them to avoid the extra operational friction and legal risk that the rule imposes only on commissions. To remove this bias and place all products and services on a level playing field, we believe the Department must make the following changes:

- Remove the private right of action and other extra compliance hurdles that apply only to commission compensation from the Best Interest Contract Exemption ("BICE").
- Work with the other financial services industry regulators to create a harmonized standard of care, with enforcement by the appropriate regulator for the product or service involved (e.g., the SEC, FINRA, state insurance departments), so that all investments, not just retirement investments, are subject to uniform rules and enforcement mechanisms.
- As part of the best interest standard, require consideration of (1) lifetime income needs and (2) the value—which requires looking through to the associated cost—of insurance guarantees in meeting those needs.
- Treat all insurance products the same under Prohibited Transaction Exemption ("PTE") 84-24 and harmonize its requirements with other exemptions.

Thank you for the opportunity to comment.

Sincerely,



Dennis R. Glass  
President and Chief Executive Officer  
Lincoln Financial Group

**Dennis R. Glass**  
*President & Chief Executive Officer*

March 17, 2017

Filed Electronically

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The Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210  
Attention: Fiduciary Rule Examination

**Re: RIN 1210-AB79**

To Whom It May Concern:

Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates (collectively, “Lincoln”). Lincoln appreciates the opportunity to comment regarding the Department of Labor’s (the “Department’s”) proposal to delay the applicability date of its fiduciary regulation and related new and amended prohibited transaction exemptions (the “fiduciary rule”).

Lincoln strongly supports a delay and improvements to the rule because the rule as written 1) is biased in favor of lower total fees without encouraging advisors and consumers to look through to the benefits that the fees pay for—this is particularly important for annuity products that charge fees for providing guaranteed lifetime income, which is a unique and extremely important source of retirement security, 2) favors fee-based compensation even in situations where commissions are more likely to be in a consumer’s best interest, and 3) with the contract requirement in the rule’s Best Interest Contract Exemption (“BICE”), creates a threat of litigation that is chilling distribution companies’ appetite to approve important consumer products like those providing guaranteed lifetime income as suitable for their customers. Because of these and other unintended consequences, the rule already has or is likely to have all of the following harmful impacts:

- **Limit consumers' access to lifetime income protections.** Over the 12-month period ending on September 30, 2016, industrywide sales of variable annuities with guarantees declined 24%.<sup>1</sup>

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<sup>1</sup> LIMRA Secure Retirement Institute Variable Annuity Guaranteed Living Benefit Election Tracking Survey, 3<sup>rd</sup> Quarter 2016.

- **Limit consumer choice in how they pay for advice.** A number of prominent firms, including Merrill Lynch and JPMorgan Chase, have announced that they will no longer allow commission-based compensation in retirement accounts.<sup>2</sup>
- **Limit product choices.** Other firms, such as Edward Jones, have announced that they will significantly limit the products available in commission-based retirement accounts and impose minimum account requirements for advisor-provided services.<sup>3</sup>
- **Favor fee-based compensation regardless of best interest.** According to Cerulli, almost two-thirds (64%) of advisors plan to increase their fee-based business.<sup>4</sup>
- **Limit small investors' access to professional financial advice.** According to Cerulli, two-thirds (66%) of advisors believe that small investors will have less access to professional financial advice as a result of the rule.<sup>5</sup> And, according to a recent report by CoreData Research, 71% of surveyed U.S. advisors plan to disengage from “mass market” investors because of the DOL rule and these advisors estimate they will no longer service 25% of their current clients—creating a potential “advice gap” for low balance investors.<sup>6</sup>
- **There is good reason to believe that this advice gap will materialize.** An advice gap developed in the UK following a similar rulemaking there that took effect in 2013, prompting the UK financial services regulator to recently recommend reforms to that rule.<sup>7</sup>
- **The UK experience is instructive.** In its report, the UK regulator cites a survey that found that 69% of advisors said they had turned away potential clients over the last 12 months, and the most common reason cited (43%) was that advice would not be cost-effective given the

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<sup>2</sup> The Wall Street Journal (“Merrill Lynch to End Commission-Based Options for Retirement Savers”), Oct. 6, 2016; Financial Planning (“JPMorgan Nixes Commissions on Retirement Accounts, Possibly Signaling Fiduciary Rule’s Staying Power”), Nov. 10, 2016. These firms will continue to allow commissions in non-retirement accounts, setting up the potential for a client to be subject to multiple fee structures if he or she has both retirement and non-retirement assets.

<sup>3</sup> Financial Advisor IQ (“Edward Jones Revamps Retirement Offerings for DOL Rule”), Aug. 19, 2016.

<sup>4</sup> The Cerulli Report – U.S. Broker/Dealer Marketplace 2016.

<sup>5</sup> Id.

<sup>6</sup> Insurancenewsnet.com (“Fiduciary Rule To Leave Mass-Market Investors Stranded”), Nov. 30, 2016.

<sup>7</sup> The Financial Times (“FCA Proposes Reforms To Close ‘Advice Gap’”), March 14, 2016.

circumstances of those clients.<sup>8</sup> Relatedly, from 2103 to 2015, the proportion of UK firms that only serve accounts of more than £100,000 more than doubled, from 13% in 2013 to 32% in 2015.<sup>9</sup>

Delaying the rule is necessary to allow the Department to take the time needed to make changes to the rule that will address these actual and potential impacts and ensure retirement savers continue to have choice in how they pay for advice and access to critically important guaranteed lifetime income products. In addition:

- If the economic impact analysis is revised to consider the impact of the fiduciary rule on consumers' access to guaranteed lifetime income products, any costs associated with a delay will be outweighed by the benefits to consumers of revising the rule.
- The 12-month implementation period was never long enough for a rule of this magnitude. While Lincoln intends to be ready to comply with the rule on April 10 if necessary, the rule's implementation would be far more cost effective and a better experience for all impacted retirement investors if the industry had a more reasonable timeline.
- More time is also needed for the insurance industry to develop fee-based products and for intermediaries to develop the platforms to distribute them, so that consumers have the ability to pay for advice related to these products on a fee or commission basis, consistent with their best interest.

Lincoln also urges the Department to:

- Finalize the delay before April 10 to avoid the marketplace disruption and consumer confusion that would result if the rule were to become applicable and then later delayed.<sup>10</sup>
- Extend the delay beyond the proposed 60 days to as long a period as is necessary to properly conduct the new economic impact and legal analysis required by the President's February 3, 2017 memorandum. Sixty days is not nearly enough time to accomplish this.

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<sup>8</sup> FCA Financial Advice Market Review, March 2016 (citing a 2016 Association of Professional Financial Advisers survey).

<sup>9</sup> Id. (citing the Blue & Green Tomorrow, Voice of the Adviser Survey, 2016).

<sup>10</sup> The Department's March 10 notice that it will suspend enforcement for any period after April 10 but before the delay is finalized, does not adequately address this risk because it only addresses the Department's own enforcement authority. In particular, it does not prevent lawsuits based on the new rule.

## **A Delay is Necessary to Allow Time for Needed Changes to the Rule**

Lincoln has always agreed with the Department's goal of ensuring that retirement savers receive advice that is in their best interest. However, we believe that our clients' interests are better served by increasing transparency of costs and allowing clients to choose how their financial advisor should be compensated, rather than dictating a favored compensation structure. We also support the concept of similar compensation for products that require similar education, time and effort and provide similar consumer benefits. This requires flexibility and choice in compensation structures to match the variety of products and services available to retirement savers, including annuities and other guaranteed lifetime income products. The Department expressly acknowledged the validity of these concepts in the final rule, stating that both commission-based and fee-based compensation structures can be in a consumer's best interest, and that in particular, commissions may be less costly than fees for long term "buy and hold" purchases, like the purchase of guaranteed lifetime income. In practice, however, the rule favors fee-based compensation, even in those situations where commissions would be more appropriate. If this flaw is not corrected, the rule will limit consumers' ability to purchase guaranteed lifetime income when they need it and to pay for related advice in the manner that reflects their best interest.

Lincoln's primary concern is with the contract requirement in the BICE, which creates a private right of action with open-ended exposure to lawsuits, including class action lawsuits, for firms and advisors who are compensated for their services on a commission basis. The contract requirement and resulting litigation exposure does not apply to fee-based compensation arrangements. In this way, the rule significantly favors fee arrangements over commission compensation. Because compensation for lifetime income products is predominantly commission-based (for good reason, as noted above), Lincoln is concerned that the rule will discourage advisors and firms from offering and recommending these important products, even in situations where these solutions are in their clients' best interest.

Although the rule has not yet gone into effect, we have unfortunately already seen our concerns borne out, as detailed at the beginning of this letter. The decline in annuity sales shows that consumers are already losing access to these needed products: with the large baby boomer generation currently in or near retirement and in need of guaranteed income, demand for these products should be increasing, not decreasing. Anecdotally, Lincoln has seen a disproportionate focus by advisors on fees for advice as the best or only solution for retirement and non-retirement accounts. This is causing firms and advisors to incorrectly evaluate guaranteed lifetime income products as expensive when compared to fee-based advisory services, without separately evaluating the added benefits of the lifetime income guarantee. These benefits are valuable: in its tax-qualified business, Lincoln guarantees future income payments worth \$33.9 billion and minimum death benefits of \$37.3 billion in today's dollars, regardless of market performance.<sup>11</sup> As

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<sup>11</sup> Amounts calculated as of December 31, 2016.



an example of the cost of these guarantees, the annual cost to Lincoln of providing a joint life lifetime income benefit averages 1.18% of the account value.<sup>12</sup>

The President's memorandum expressed concern that the fiduciary rule may (1) harm retirement investors due to reduced access to retirement savings products and services, (2) disrupt the retirement marketplace in a manner that is harmful to retirement investors, and (3) cause an increase in litigation and an increase in costs to retirement investors. The market developments we have highlighted show that these impacts are already taking place.

We therefore urge the Department to delay the applicability date of the rule to allow adequate time to fix the flaws that are causing these outcomes. We recommend the following changes:

- Remove the contract requirement from the BICE. This will remove the rule's inappropriate bias in favor of fee compensation. We also do not believe that enforcement of a best interest standard should be handled with litigation, which can produce unpredictable and inconsistent results. Instead, both consumers and financial services professionals are best served by using, and improving where necessary, existing regulatory enforcement mechanisms, such as those available through the SEC and FINRA.
- The rule's best interest standard should be coordinated and harmonized with standards of care applicable to all markets—both retirement and non-retirement accounts. This will require coordinated rulemaking with the SEC and other regulators to ensure a single workable standard of care for firms and advisors to adhere to for their client's entire investment portfolio, not just the retirement portion.
- The best interest standard should require consideration of guaranteed lifetime income needs. In the age of disappearing defined benefit plans, uncertainty about Social Security, and Americans' increasing reliance on personal savings to fund retirement, guaranteed lifetime income products are often the only way for consumers to obtain retirement income that they cannot outlive, and should be part of the best interest analysis for many, if not most, retirement savers.
- For annuities and other guaranteed lifetime income products, the rule must require consideration of the value of the guarantees that the product fees are paying for when evaluating the reasonableness of fees and comparing product solutions.

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<sup>12</sup> Calculated as of December 31, 2016.

## **The Department's Calculation of the Cost of a Delay Should Consider the Impact on Consumers' Access to Lifetime Income and Advice**

Lincoln also notes that the Department's calculation of the costs of delaying the fiduciary rule is flawed. It relies on the same economic impact analysis used to support the fiduciary rule when it was issued in April 2016. This analysis did not consider the cost associated with consumers' loss of access to guaranteed lifetime income products at all. Nor did it consider the costs associated with consumers' loss of access to advice. Were the calculation adjusted to account for these impacts, Lincoln believes a delay would be more than justified by the benefits of resulting improvements to the rule.

## **Consumers Will Benefit From a Longer Implementation Period**

Finally, a delay in the applicability date is justified by the sheer volume of work that is necessary to properly implement this rule. In our original comment letter, we urged an implementation period of at least 36 months, based on the enormity of the changes that the rule would require to business models, products, operations and even the most basic communications between financial services providers and their customers. While Lincoln is committed to implementing the rule on April 10 if necessary, the 12-month implementation period provided in the rule was never adequate time for the industry to comply in an optimal manner. In particular, the industry needs time to develop fee-based insurance products and the operations and technology necessary to support them so that consumers can continue to have access to a robust market of guaranteed lifetime income products, and be able to choose how they pay for related advice. We urge the Department to delay the rule so that we can minimize the added cost, potential market disruption, and loss of access to important retirement security solutions that retirement investors will suffer as a result of a rush to meet what was always an unreasonably short compliance deadline.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dennis R. Glass'.

Dennis R. Glass  
President and Chief Executive Officer  
Lincoln Financial Group