Lincoln Financial Group®

August 3, 2017

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President & Chief Executive Officer

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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

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") Request for Information ("RFI") regarding the possible changes to the fiduciary regulation and related new and amended prohibited transaction exemptions (the "fiduciary rule").

While the following comments relate to guaranteed lifetime income products generally, they focus primarily and specifically on variable annuities with lifetime income guarantees. Variable annuities are an important retirement income solution already being used by over 29 million Americans to enhance their retirement security and will be even more important in the years ahead as Americans continue to live longer in retirement. Currently, 60% of individual annuity owners have an annual household income of less than $75,000.[1] Given these facts, regulatory efforts should facilitate, not hamper, consumers' access to these products.

As stated in all prior comment letters on the fiduciary rule,[2] Lincoln has always agreed with the Department's goal of ensuring that retirement savers receive advice that is in their best interest.

[1] 2013 Survey of Owners of Individual Annuity Contracts, conducted by The Gallup Organization and Mathew Greenwald & Associates for the Committee of Annuity Insurers.

[2] Since the rule was proposed in April of 2015, Lincoln has submitted four separate comment letters (submitted on July 21, 2015, September 24, 2015, March 17, 2017 and July 14, 2017) and joined with seven other insurance companies on one group comment letter (submitted on September 24, 2015). (We refer to these prior letters in numerous places in this letter, and have attached them for ease of reference.) We have also participated in numerous meetings with Department officials and staff on this topic to educate the Department about insurance products and their vital importance to consumers' retirement security, and to provide input on needed changes to the rule so that consumers do not lose access to these products.

However, 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 are often more appropriate for a consumer than fees. This type of one-size-fits-all regulatory favoritism does not serve consumers' best interests. Rather, it improperly encourages firms and advisors to favor fee-based advice, not because it is better for their customers, but because it allows them to avoid the extra operational hurdles and legal risk that the rule imposes only on commissions. We are already seeing the impact of this in the retirement market in the form of reduced consumer access to important retirement security products such as guaranteed lifetime income:

- In the fourth quarter of 2016, industrywide sales of variable annuities with guarantees declined 34% from the same quarter in 2015. This was the sixth consecutive quarter of declines.[3]

- As of the end of 2016, industrywide sales of variable annuities with guarantees dropped $26 billion in the previous two years, driving sales of these products to the lowest annual level since LIMRA began tracking this back in 2006.[4]

- For 2017, industrywide sales of variable annuities are expected to further decline 10—15%.[5]

This is happening because over the last year, financial services firms have been moving to eliminate or limit the availability of commissionable products on their retirement platforms in anticipation of the rule going into effect. In our March 17, 2017 comment letter, we provided several data points demonstrating this, pointing in particular to some prominent firms who announced last year that they will no longer offer commission-based retirement accounts.[6] Market data published since then continues to show imminent harm to retirement savers as a result of this flaw in the rule. For example:

- **Advice is becoming unaffordable.** A 2017 report by the National Association of Insurance and Financial Advisors ("NAIFA") found that nearly 90% of financial professionals believe consumers

[3] LIMRA Secure Retirement Institute Variable Annuity Guaranteed Living Benefit Election Tracking Survey, 4th Quarter 2016.

[4] Id.

[5] LIMRA Secure Retirement Institute 2017 Individual Variable Annuity Sales Forecast, April 2017.

[6] See page 2 of the March 17 comment letter.

will pay more for professional advice services.[7] A 2017 report by the American Action Forum estimates that the rule will result in additional charges to retirement investors of $800 per account or over $46 billion in aggregate.[8]

- **Access to advice and products is being reduced.** The 2017 NAIFA report found that 75% of financial professionals have seen or expect to see increases in minimum account balances for the clients they serve, and 91% have already experienced or expect to experience restrictions of product offerings to their clients.[9]

- **Accounts are being "orphaned."** The 2017 American Action Forum report estimates that as many as $28 million Americans could lose access to advice due to increased minimum account requirements imposed by firms in response to the rule.[10] A 2016 study by A.T. Kearney found that by 2020, financial services firms will collectively stop serving the majority of the $400 billion currently held in low-balance accounts.[11] Lincoln is already experiencing this: The number of Lincoln IRA annuity contracts that were orphaned in 2016 was more than double what it was in 2015, and the number of Lincoln IRA annuity contracts that have been orphaned to date in 2017 has already exceeded the 2016 total.

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[7] U.S. Chamber of Commerce, "The Data Is In: The Fiduciary Rule Will Harm Small Retirement Savers," Spring 2017 at page 5, available at https://www.uschamber.com/sites/default/files/ccmc_fiduciaryrule_harms_smallbusiness.pdf .

[8] Meghan Milloy, "The Consequences of the Fiduciary Rule for Consumers," American Action Forum (April 10, 2017).

[9] U.S. Chamber of Commerce, "The Data Is In" at page 5.

[10] Meghan Milloy, "The Consequences of the Fiduciary Rule for Consumers."

[11] A.T. Kearney, "The $20 billion impact of the new fiduciary rule on the U.S. wealth management industry" (October 2016), at pp. 15—18, available at https://www.atkearney.com/documents/10192/7041991/DOL+Perspective+-+August+2016.pdf/b2a2176b-c821-41d9-b12e-d3d2b0807d69.

These estimated impacts are coming to fruition in the marketplace right now. Significant changes that several large firms have already made in response to the rule include: [12]

- No longer offering certain products in commission-based IRA accounts.
- Offering no commission-based IRA accounts at all.
- Raising minimum account thresholds for services.

To correct the bias against commissions and reverse these alarming trends, the Department must make the following changes:

- Remove the private right of action 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.

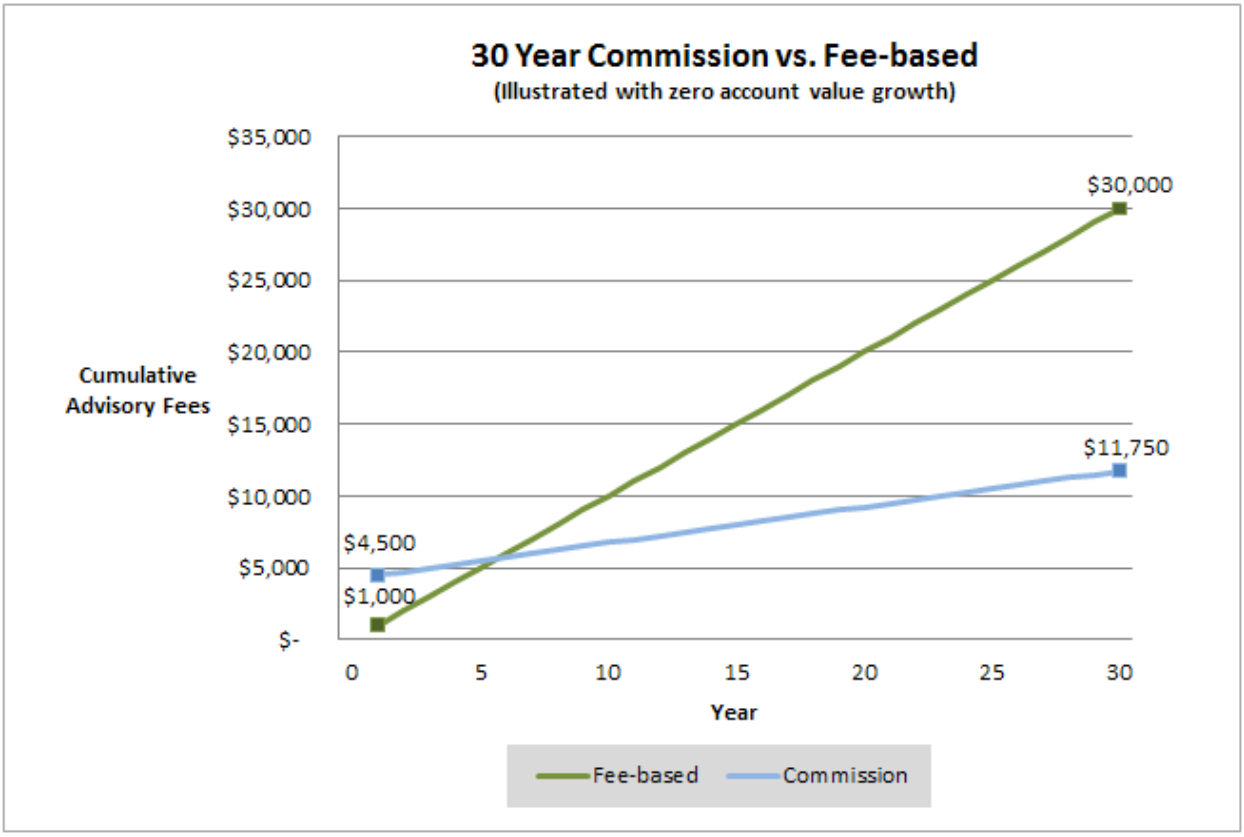
Commissions are in Many Consumers' Best Interest

We believe that consumers' interests are best served through clear disclosure of costs and by allowing clients to choose how their financial advisor is compensated. We also support the concept of similar compensation for products that require similar education, time and effort and provide similar consumer benefits. In the context of long term "buy and hold" purchases, like the purchase of guaranteed lifetime income, commissions are the way in which most advisors are paid because a commission will usually be less costly over the life of the annuity contract. Commissions are also generally a better match with the services provided with these products, since they include very extensive and personalized up-front education and guidance, and relatively less extensive ongoing service.[13] Commissions are similarly front-loaded, paying the advisor more up front and paying less on an ongoing basis. By contrast, fee compensation structures typically pay the advisor the same annual

[12] "A Complete List of Brokers and Their Approach to 'The Fiduciary Rule'," Wall Street Journal (February 6, 2017) available at https://www.wsj.com/articles/a-complete-list-of-brokers-and-their-approach-to-the-fiduciary-rule-1486413491.

[13] Please see page 4 of our July 21, 2015 comment letter on the proposed fiduciary rule for a more detailed explanation of the typical advice cycle for guaranteed lifetime income products.

percentage indefinitely. This can result in the fee compensation model paying much more to an advisor than a commission would over the long term, as shown in this example:[14]



We are not suggesting that fee-based arrangements are always problematic or that commissions are always better. Rather, this example is simply intended to illustrate why the manner in which consumers pay for advice should be a matter of individual choice, without a blanket regulatory preference for one model over another. Consumers do not appreciate the government taking this choice away from them: According to a February 2017 survey of more than 1,000 investors conducted by J.D. Power, 59% who pay commissions say they either probably will not (40%) or definitely will not (19%) be willing to stay with their current firm if it means being forced into a fee-based account.[15]

[14] We previously provided the Department with this illustration in our July 21, 2015 comment letter. This shows an example of a $100,000 annuity purchase of a typical B-share class variable annuity providing an upfront 4.5% advisor commission and a 25 basis point ongoing advisor commission for service, compared to typical fee-based advisor compensation of 1%. For simplicity, we show a zero rate of return. The commission-based model pays higher compensation in year one, but the fee-based model pays much higher compensation over the long-term.

[15] J.D. Power, "Wealth Management Fiduciary Roulette" (February 2017).

These statistics should come as no surprise. Different types of financial products and compensation models provide different benefits, have different consumer impacts, and meet different consumer needs. To assume that these needs are all alike and develop rules that favor a single preferred model fails to recognize this reality and ultimately harms consumers by limiting their access to important financial products and potentially more cost-effective services.

The Department's blanket preference for fee-based compensation is also inconsistent with the approach of other regulators. The SEC and FINRA understand that fee-based compensation can be inappropriate, particularly in accounts with little to no trading activity, and have focused on it in regulatory exams in recent years.[16] The Department itself, in the preamble to the fiduciary rule and in subsequent guidance, has acknowledged that both commission-based and fee-based compensation structures can be in a consumer's best interest depending on the circumstances, and that fees can be inappropriate for investors in accounts with low or no trading activity. Such "low-or-no-trade" accounts would certainly include guaranteed lifetime income contracts.

Despite this, the structure of the fiduciary rule continues to favor fee-based compensation in all situations, even those in which commissions may be more appropriate. While we believe this is an unintended consequence, the effect is that the rule requires a lower standard of care and a less rigorous process for demonstrating that the standard is met for fees than for commissions. Unfortunately, the Department proposes to perpetuate and expand this problem with preferential "streamlined" exemptions for fee-oriented products and compensation structures, such as "T-shares", "clean shares" and fee-based annuities.[17] We strongly disagree with this approach because, for the reasons just outlined, there can be no one-size-fits-all preferred compensation structure that is in every consumer's best interest. We urge the Department to reverse course and hold fee-based compensation and commissions to the same standards, so that commissionable products such as guaranteed lifetime income products can be made available to consumers on a level playing field with other retirement products and services.

Eliminate the Private Right of Action

As we have stated in our previous comment letters, the primary way in which the fiduciary rule discriminates against commissions is through the contract requirement in the BICE, which creates a private right of action and open-ended exposure to lawsuits, including class action lawsuits, for firms and advisors who are compensated for their services on a commission basis. This contract requirement and resulting litigation exposure does not apply to fee-based compensation arrangements. This risk is estimated to be significant and is the primary driver of firms' decisions to limit or eliminate their commissionable retirement offerings and move to more fee-based offerings. According to one report,

[16] "2013 Report on Conflicts of Interest", the Financial Industry Regulatory Authority (October 6, 2013) at p. 29.

[17] See questions 7—9 of the RFI.

the cost to settle class action lawsuits in connection with the BICE private right of action will range from $70 to $150 million per year.[18] This same report notes that in the near term, costs could be even higher, as firms figure out how to manage this cost and risk. In addition, this report notes that "in a bearish scenario, the cost of class-action settlements alone could decrease the operating margin on the advised, commission-based IRA assets of affected firms by 24%–36%."[19]

As the market data cited at the beginning of this letter demonstrates, by imposing the private right of action risk only on commissions, the rule discourages advisors and firms from offering and recommending commissionable guaranteed lifetime income products, even in situations where customers need retirement income and the solutions are in their best interest. We again urge the Department to remove this regulatory market interference and allow guaranteed lifetime income products to be sold on a level playing field with other retirement products.

We also believe that a best interest standard is best handled through existing regulatory enforcement mechanisms (such as those overseen by the SEC, FINRA and state regulators) rather than private litigation, which can produce unpredictable and inconsistent results and benefits trial lawyers more than it does consumers. Data prepared for the U.S. Chamber Institute for Legal Reform by Mayer Brown LLP supports this. That report found that class action lawsuits resulting from the BICE private right of action would provide almost no benefit to class members, but rather just benefit the lawyers.[20]

Harmonize the Standard of Care and Related Compliance Requirements

We were very encouraged to hear Secretary Alexander Acosta and SEC Chairman Jay Clayton publicly commit their agencies to work together on standards of conduct applicable to financial services professionals. We are also aware that the National Association of Insurance Commissioners ("NAIC") has formed a working group dedicated to developing a model standard of care regulation for states to adopt, that would apply to the sale of insurance products that are not regulated by the SEC. These are very good developments and we strongly encourage the Department to engage with these other regulators, as it works to revise the fiduciary rule. The end result must be that the standard of care for investment advice is the same for all products, regardless of whether the account involved is a retirement account. Indeed, if the Department is truly committed to ensuring that consumers can trust their advisors to act in their best interest with respect to their retirement savings, correcting the

[18] Michael Wong, "Costs of Fiduciary Rule Underestimated," Morningstar (February 9, 2017).

[19] Id.

[20] Mayer Brown LLP, "Do Class Actions Benefit Class Members? An Empirical Analysis of Class Actions." Available at http://www.instituteforlegalreform.com/uploads/sites/1/Class-Action-Study.pdf (December 2013). While Lincoln understands that the Department is no longer defending the provision in the BICE that prohibits class action waivers in arbitration agreements, Lincoln does not believe that this sufficiently addresses the concerns about litigation risk, including class action risk. In particular, this change in position does not help financial institutions regulated by FINRA since FINRA has its own prohibition on class action waivers.

confusing disarray of differing standards of care and enforcement mechanisms for retirement and non-retirement accounts should be its number one goal.

Once the Department and other regulators agree on a standard of care, associated rulemaking and enforcement should be done by the appropriate regulator for the product or service involved—SEC/FINRA for retail securities, state regulators for non-securities like fixed annuities, and the Department for employer sponsored retirement plans that are covered by ERISA. For retirement products and services sold outside of employer sponsored plans, this can be accomplished by treating compliance with the appropriate regulator's rules as also meeting the requirements of the fiduciary rule.

Require Consideration of Lifetime Income Needs in Retirement

Because its focus is skewed to fees and compensation, and their potential negative impact on investment returns, the fiduciary rule currently encourages advisors to overlook the benefits of guaranteed lifetime income. As we have pointed out numerous times in previous comment letters, guaranteed lifetime income is a critical and valuable benefit since it can ensure an income stream that continues for an individual's lifetime regardless of how long that is and regardless of market conditions. 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 the only way for the vast majority of consumers to obtain retirement income that they cannot outlive. As we noted in our July 21, 2015 comment letter, less than 5% of retirement savers who are covered by a defined contribution plan have access to guaranteed lifetime income through that plan. For the remaining 95%, and for the many retirement savers with no access to an employer-sponsored plan, the only way to get these protections is through an individual fixed or variable annuity. To ensure that consumers do not continue to lose access to these vital products, the rule must be revised to expressly require consideration of guaranteed lifetime income needs as part of the best interest analysis for all retirement savers.

As part of this, the best interest standard must also require separate consideration of guarantees and their associated costs when evaluating the reasonableness of fees and comparing product solutions, so that these costs are not improperly lumped in with or compared to fees for investment advice or management. As we noted in our March 2017 comment letter, the rule's almost exclusive focus on fees for advice and investment performance has caused advisors to limit their service models to charging a fee for advice as the best or only solution for both 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 lifetime income guarantees.

Treat All Insurance Products the Same under PTE 84-24

While we believe the best long term approach is for the Department to create a rule that is coordinated with the requirements of other industry regulators, we recognize that this will take some

time. In the meantime, in order to reverse the harmful decline in consumer access to insurance products that we have seen over the last year, it is imperative that the fiduciary rule allow insurance products with guarantees to be sold on a level playing field with other investments. The Department took a step in the right direction in April of this year when it allowed variable and fixed indexed annuities to continue to be sold under PTE 84-24 until January 1, 2018. We urge the Department to make this change permanent, so that PTE 84-24 can remain an available exemption for all insurance products, not just fixed rate annuities.

As has been pointed out in the many comment letters submitted by Lincoln and others in the industry, PTE 84-24 was developed for insurance products. As such, it explicitly permits commissions and recognizes the unique value of product features like insurance guarantees rather than focusing almost exclusively on investment advice services, as the BICE does. Having a separate exemption for all insurance products appropriately recognizes that they are different from other investments. It also advances the goal of treating similar products alike—something the Department has publicly affirmed. Finally, it minimizes inappropriate comparisons of fundamentally different products and services, while allowing consumers to easily compare all insurance products under one set of rules. When the Department initially proposed to move variable annuities to the BICE, Lincoln and others in the industry were concerned that without a separate set of rules for insurance products, firms and advisors would improperly evaluate them on the same basis as the mutual funds and other non-guaranteed investments and services that are covered by the BICE. For example, it would be inappropriate to evaluate the costs and benefits of an insurance guarantee on the same basis as one would evaluate a fee-based service model. Unfortunately, as noted above, we are seeing firms and advisors do just that, and incorrectly evaluate the insurance product as too expensive relative to the advice service.

The Department has never articulated a good reason for removing variable and fixed indexed annuities from PTE 84-24 and placing them in the BICE. Its initial rationale for moving variable annuities to the BICE was that these products are securities and therefore should be subject to the same rules as mutual funds and other securities. This rationale ignored the fact that the vast majority of variable annuities in retirement accounts have insurance guarantees and therefore are more like fixed annuities than mutual funds.[21] This raised industry concerns that the Department did not understand that insurance guarantees, and the lifetime income and death benefit protections that they provide, are a significant feature of variable annuities. In response, the industry took steps to educate the Department on this point, in comment letters and in meetings among industry representatives and Department personnel.[22]

[21] For example, we noted in our September 24, 2015 comment letter that in 2014, over 70% of industry variable annuity sales were in products offering these guarantees, and that over the five year period ending with the first quarter of 2015, 75% of the income guarantee benefits sold had been through variable annuities.

[22] For example, Lincoln participated in a meeting with Department personnel and several other insurance companies on August 24, 2015, to educate the Department about how annuities work and their

In the final rule issued in April of 2016, the Department changed its rationale somewhat so that it could justify moving fixed indexed annuities into the BICE along with variable annuities. The new rationale was that these products require consumers to shoulder significant investment risk, are complex, are subject to conflicts of interest at point of sale and are susceptible to abusive sales practices.[23] This rationale again seems to ignore or at least significantly discount the prevalence of insurance guarantees in these products. In fact, in explaining its decision to exclude these products from PTE 84-24, the Department stated that "conflicts of interest in the market for retail investments result in billions of dollars in underperformance to investors," indicating that the Department continued to erroneously believe that the only reason someone would purchase a variable annuity is for the investment returns.[24] The other factors cited to justify this decision—point-of-sale conflicts and susceptibility to abusive sales practices—are not convincing reasons for treating variable annuities differently from fixed annuities because these factors are also considerations in the sale of fixed annuities. The Department specifically cited "enhanced" conflicts of interest in connection with the sale of variable annuities and fixed indexed annuities, as compared to fixed annuities, but never said what those extra conflicts are.[25] Its rationale overall seems to be based on an unsubstantiated notion that there are unique conflicts and sales practice concerns with these products that are not present with other insurance products. We do not believe this is a sufficient basis for treating these products so differently from other insurance products, particularly given the demonstrably harmful impact this differential treatment has had on consumer access to guaranteed lifetime income products. It also bears noting again that point-of-sale conflicts and abusive sales practices are concerns when it comes to the sale of all investment products and services, including fee-based advice, as discussed earlier in this letter.

As the data cited at the beginning of this letter show, the Department's ill-considered and never adequately explained decision to limit consumer access to guaranteed lifetime income products by moving them out of PTE 84-24 and into the BICE has already caused significant harm. We applaud the Department for delaying the effectiveness of this change and urge the Department to make this delay

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unique value in helping consumers achieve retirement security. On February 22, 2016 we participated in a similar meeting with the Obama Administration's Office of Management and Budget.

[23] 81 Fed. Reg. 21152, 21153 (April 8, 2016).

[24] We still have concerns that the Department does not understand these products. In its July 3, 2017 brief in *Chamber of Commerce v. Acosta*, Case No. 17-10238 (5th Cir.), responding to the industry's recent appeal of the district court's decision upholding the rule, the Department describes variable annuities as products that "do not guarantee any future income to investors," whose "structure allocates all risk to investors." There is no mention anywhere of the guaranteed lifetime income features that are so important to the consumers who purchase these products inside retirement accounts.

[25] 81 Fed. Reg. 21158 (April 8, 2016).

permanent so that consumers do not continue to lose access to these important retirement security products.

Finally, PTE 84-24 should be revised to (1) harmonize its disclosure requirements with other exemptions and (2) cover all forms of compensation attendant to the sale of an annuity, not just insurance commissions. There is no good reason for the disclosure requirements in PTE 84-24 to be different from, for example, the BICE. All that does is create unnecessary complexity and cost, particularly for insurance companies who need to provide fiduciary intermediaries with the information necessary to comply with both exemptions. The limitation of PTE 84-24 to only allow the payment of insurance commissions and not allow other common forms of compensation such as revenue sharing payments, administrative fees and marketing fees, makes the exemption unusable for many intermediaries. The only reason the Department articulated in the final rule for limiting the exemption to insurance commissions was that if fiduciary intermediaries want to receive these other forms of compensation, they can use the BICE.[26] This rationale does not make sense if PTE 84-24 is to continue to be used for the sale of all insurance products, as is currently the case and as we advocate here. And as we explained in our July 21, 2015 comment letter,[27] provided the compensation is disclosed and reasonable in amount, there is no good reason to limit the types of compensation covered, especially given the presence of the impartial conduct standards in the current version of the exemption. If the sale is in the best interest of the consumer, the forms of compensation paid should be irrelevant.

Thank you for the opportunity to comment.

Sincerely,

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

[26] 81 Fed. Reg. 21166 (April 8, 2016).

[27] See pp. 13—14 of our July 21, 2015 comment letter.

Lincoln Financial Group®

July 14, 2017

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President & Chief Executive Officer

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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,[1] 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-

[1] 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 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.

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March 17, 2017

Filed Electronically

The Office of Regulations and Interpretations
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Room N-5655
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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%.[1]

[1] LIMRA Secure Retirement Institute Variable Annuity Guaranteed Living Benefit Election Tracking Survey, 3rd 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.[2]

- **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.[3]

- **Favor fee-based compensation regardless of best interest.** According to Cerulli, almost two-thirds (64%) of advisors plan to increase their fee-based business.[4]

- **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.[5] 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.[6]

- **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.[7]

- **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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[2] 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.

[3] Financial Advisor IQ ("Edward Jones Revamps Retirement Offerings for DOL Rule"), Aug. 19, 2016.

[4] The Cerulli Report – U.S. Broker/Dealer Marketplace 2016.

[5] Id.

[6] Insurancenewsnet.com ("Fiduciary Rule To Leave Mass-Market Investors Stranded"), Nov. 30, 2016.

[7] The Financial Times ("FCA Proposes Reforms To Close 'Advice Gap'"), March 14, 2016.

circumstances of those clients.[8] 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.[9]

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.[10]

- 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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[8] FCA Financial Advice Market Review, March 2016 (citing a 2016 Association of Professional Financial Advisers survey).

[9] Id. (citing the Blue & Green Tomorrow, Voice of the Adviser Survey, 2016).

[10] 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.

Lincoln Financial Group®

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.[11] As

[11] 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.[12]

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.

[12] 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,

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

September 24, 2015

Filed Electronically

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

Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW, Suite 400
Washington, DC 20210

Re: Definition of the Term "Fiduciary:" Conflict of Interest Rule (RIN 1210–AB32)
Proposed Amendment to Proposed Partial Revocation of Prohibited Transaction Exemption 84-24 (ZRIN 1210-ZA25)
Proposed Best Interest Contract Exemption (ZRIN 1210-ZA25)

To Whom It May Concern:

The undersigned are leading life insurance companies in the United States. We are pleased to have this opportunity to provide additional comments on the Department of Labor's ("Department's) proposed fiduciary advice regulation and related prohibited transaction exemptions (the "Proposal"). We appreciate the Department's efforts to understand our industry's questions and concerns about the Proposal and to work with us to address the Proposal's unintended consequences that would limit consumers' access to critical lifetime income guarantees through annuities.

We further appreciate the Department's recognition of the important role of guaranteed income in retirement planning for America's workers. First and foremost, as insurance products, variable annuities provide valuable lifetime guarantees, even though they are also registered securities. Because variable annuities are insurance products, the features of and compensation related to such annuities are materially different from mutual funds and other types of securities, for which the Best Interest Contract Exemption ("BIC Exemption") appears primarily to have been designed.

We strongly believe that long-standing PTE 84-24 should continue to include variable annuities. Apparently, in the Department's view, these products are better covered under the BIC Exemption simply because they are also regulated as securities. The securities laws themselves recognize that variable annuities are different from mutual funds and accommodate these differences in various places. See, for example, FINRA Rule 2330, FINRA IM-2210-2 and SEC Form N-4. There is nothing inherent in ERISA plans and IRA's that would call for a different perspective. We believe that retirement savers will be presented with more lifetime income options by advisors if the Department provides product flexibility and choice by keeping the current treatment of variable annuities with all other annuity and insurance options under PTE 84-24.

If the Department opts to keep variable annuities in the BIC Exemption, the Department has asked for specific recommendations to amend the BIC Exemption so that it would be workable for investment advice related to annuities. The following proposed changes to the exemption text are intended to achieve two primary objectives:

- First, these changes recognize and address the real differences presented by insurance contracts and annuities, and amend the securities-focused language to address these unique concerns. Without these changes, we believe the exemption as proposed would severely disadvantage insurance products and annuities in the marketplace, undermining the Department's goal of ensuring retirees have access to guaranteed income solutions through annuities.

- Second, we suggest more general changes to the exemption to facilitate its wider use by advisors.

The operational complexities of the BIC Exemption must be simplified if advisors and firms that offer annuities are to use it. The Department has proposed Section VI under the BIC exemption and this section can be amended to address our concerns. A redline of these changes is included in Appendix A to this letter.

The changes are summarized below:

Reasonable compensation. The Department should amend the BIC Exemption to provide an annuity specific definition of "reasonable compensation" that accounts for the value of the insurance guarantees and other benefits inherent in an annuity product and their costs, and the extensive time needed for up-front client education that is required for annuity product sales. This would make clear that insurance commissions that are higher than mutual fund commissions, or that are initially higher than fee-based compensation, are reasonable provided they are consistent with customary compensation practices in the annuity marketplace. It would also expressly permit insurers to maintain the "statutory employee" programs. The topic of statutory employee programs was something that the Department requested more information about at the August 24 meeting. Please see attached Appendix B for more details about insurance company statutory employees.

Definition of Material Conflict of Interest. An annuity-specific definition of a "material conflict of interest" that would make clear that an insurance commission that is higher than a mutual fund commission or that is initially higher than a fee-based compensation arrangement is not by itself evidence of a violation of the best interest standard.

Disclosure. The Department should ensure required disclosures work for annuity products. A tailored disclosure for annuities would cover a description of the contract and its benefits, advisor compensation (defined as insurance commissions), other payments to the advisor, selling firm, or the Financial Institution as defined in Section VII(e) of the red-lined BIC Exemption attached..

Insurance company "spread" should be expressly excluded from the disclosure requirements and the "reasonable compensation" definition because it is not something that can be known or quantified over any particular period. For example, in the case of a fixed annuity, or the fixed component of a variable annuity, spread is the difference between the fixed return credited to the contract holder and the insurer's general account investment experience. The spread can be positive or negative and is not known in advance, or at any point in time during the life of the contract. Until the insurer's performance under the contract is complete, it will not know whether it has lost money, covered its costs or perhaps gained a profit on that contract. The Department has agreed with this in other regulatory contexts and should also do so here.

Operational Conditions. We also propose several changes to the BIC Exemption for all products sold in reliance on it, including annuities. The intent of these proposed changes is to remove unnecessary administrative burdens that do not benefit retirement savers and retirees so that firms will be able to use the BIC Exemption to recommend all retirement investment products, including annuities – that are in the client's best interests. Many of these are changes that were specifically raised by many of the undersigned companies as well as industry groups during the comment period that ended in July. The attached mark-up in Appendix A provides more detail about these proposed changes and supporting rationale.

Thank you for the opportunity to comment on this important initiative.

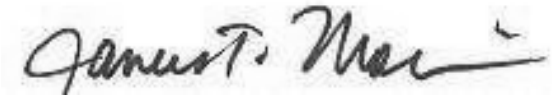
Sincerely,

Mark Pearson
Chairman & CEO
AXA US

James R. Sopha
President
Jackson National Life Insurance Company

Dennis Glass
President & CEO
Lincoln Financial Group

Kirt Walker
President & CEO, Nationwide Financial
Nationwide



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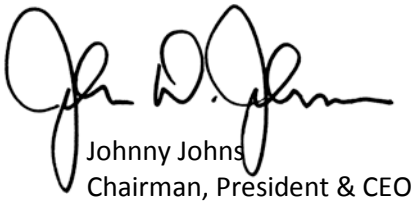

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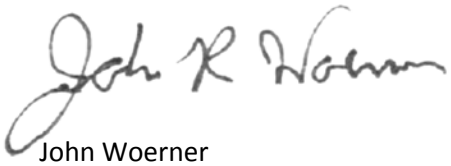

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September 24, 2015

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Re: Definition of the Term "Fiduciary:" Conflict of Interest Rule (RIN 1210–AB32)
Proposed Amendment to Proposed Partial Revocation of Prohibited Transaction Exemption 84-24 (ZRIN 1210-ZA25)
Proposed Best Interest Contract Exemption (ZRIN 1210-ZA25)

To Whom It May Concern:

Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates (collectively, "Lincoln"). Lincoln is pleased to have this opportunity to provide additional comments on the Department of Labor's ("Department's) proposed fiduciary advice regulation and related prohibited transaction exemptions (the "Proposal"). We appreciate the Department's efforts to understand the life insurance industry's questions and concerns about the Proposal and to work with us to address the Proposal's unintended consequences that would limit consumers' access to critical lifetime income guarantees.

In this regard, we appreciate Department Secretary Perez's time in attending the July 30th meeting with Jeffrey Zients, Director of the President's National Economic Council, and several representatives of the U.S. Chamber of Commerce. We also appreciate the Department's follow-up meeting with representatives from Lincoln and several other insurance companies on August 24. These meetings were extremely helpful in giving us greater insight into the Department's goals, and also allowed the Department to gain a better understanding of annuities, including how they differ from other retirement investment products.

This letter will respond to a number of specific requests for additional information by the Department at the August 24 meeting. It also will cover the following topics:

- We continue to emphasize the arguments made in our July comment letter, as well as the letters submitted by industry groups such as the American Council of Life Insurers (ACLI), the Insured Retirement Institute (IRI) and the Committee of Annuity Insurers (CAI), that Prohibited Transaction Exemption (PTE) 84-24 should continue to cover variable IRA annuity sales, along with other insurance products, as it has for the last 30+ years. The Department's stated basis for its proposal to remove variable IRA annuity sales from its scope and to lump them in with mutual funds and other non-guaranteed investment products under the Best Interest Contract (BIC) exemption is that they are registered securities. This justification to move variable annuities out of PTE 84-24 does not make sense because, as we discussed, the SEC and FINRA treat variable annuities differently from mutual funds under the securities laws. See, for example,

FINRA Rule 2330, FINRA IM-2210-2 and SEC Form N-4, discussed below. There is nothing inherent in tax advantaged accounts that would call for a different perspective. Furthermore, insurance guarantees are a significant feature of variable annuities. Given the significance of this proposed change and the clear disadvantage that it creates for variable annuity sales as compared to other retirement investment products, we think the Department should continue to make PTE 84-24 available for all annuities.

- If the Department nevertheless concludes that the Best Interest Contract (BIC) exemption should become the only exemption available for variable IRA annuity sales, we propose expanding the existing section for annuities that is already in the BIC exemption to include annuity-specific provisions that account for the value of insurance guarantees rather than focusing on just investment performance and fees, allows consumers to properly compare like products on an apples-to-apples basis, and does not invite improper comparisons with mutual funds and other non-guaranteed products.[1]

Supplemental Comments Regarding Proposed Changes To PTE 84-24

We urge the Department to maintain PTE 84-24 as an available exemption for all annuities. As has been pointed out in the many comment letters submitted by the industry on and before July 21, 2015, PTE 84-24 was developed for insurance products. As such, it explicitly permits commissions and recognizes the value of product features like insurance guarantees rather than focusing solely on investment advice services, as the BIC exemption does. The disclosure requirements of PTE 84-24 already work for insurance products and many in the industry have already adjusted to the requirements of this exemption. Having a separate exemption for all annuities illustrates that annuities are different from other investments. It also advances the goal of treating similar products alike—something the Department has publicly affirmed. Finally, it minimizes inappropriate comparisons of fundamentally different products and services,[2] while allowing consumers to easily compare all annuity products under one set of rules.

Treating all annuity products the same, and within the same exemption, is preferable to bifurcating one class of annuity and requiring it to comply with the BIC exemption. The Department's stated basis for including variable annuities in the BIC exemption—that variable annuities are securities— is misguided. Not all securities are the same products, nor can they be regulated under identical rules. In fact, SEC and FINRA rules and regulations contain unique requirements for annuities, including variable annuities, in recognition of their differences from other securities and mutual funds. For example:

- SEC requirements for prospectus content are very specific for variable annuities (Form N-4), including detailed descriptions of contract expenses in a standard format as well as the contract terms, and specific rules for calculating standard performance of variable annuities.
- FINRA Rule 2330: Members' Responsibilities Regarding Deferred Variable Annuities; with heightened suitability requirements for recommended transactions, expanded principal review and approval requirements as well as firm supervisory and training requirements. In particular, there must be an "annuity-specific" reason why the client is choosing to purchase the annuity. Such reasons might include the need for access to guaranteed lifetime income through the right to annuitize the contract and/or downside risk protection to weather market downturns as an individual nears or is in retirement through living benefit riders.

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[1] We also propose several additional adjustments to the BIC exemption that would greatly simplify its overall requirements, so that it could actually be usable.

[2] For example, it would be inappropriate to compare an insurance guarantee, and the fee charged for that feature, to investment advice, and the fee charged for that service.

- FINRA Advertising Standards for variable annuities are set forth in IM-2210-2; which require identification of the product as insurance, discussion of the long term nature of the product, prohibitions against guaranteeing investment return, requirements for showing performance and rules for product comparisons.

The Department Has Not Provided Adequate Rationale For Removing Variable IRA Annuities From PTE 84-24.

As annuities are treated differently from other investment products, it makes more sense for the Department to have a set of prohibited transaction rules for annuities, including variable annuities, which recognizes the differences between annuities and other investment products, just as the SEC and FINRA do, and as the Department does with PTE 84-24 as currently written. The Department's proposal now to no longer recognize these differences for variable annuities is a serious step back from this sensible approach. It indicates a lack of understanding about the insurance guarantees that variable annuities provide. As noted in our July comment letter, over the last five years, 75% of the income guarantee benefits sold have been through variable annuities.[3] These significant numbers show that variable annuities certainly are not just like mutual funds, stocks and bonds, which have no income guarantees, and should not be treated the same as these other investments. We urge the Department to recognize the significant differences between variable annuities and non-guaranteed investment products by allowing PTE 84-24 to continue to cover variable IRA annuity sales.

If the Department declines to do this, we believe that a rationale based solely on the fact that variable annuities are securities is insufficient and will be evidence of a continued misunderstanding about the nature of these products. We are very concerned that this misunderstanding will result in a rule that will discourage firms and advisors from recommending annuities, when they are in a consumer's best interest, resulting in reduced consumer access to critical guaranteed income products. It will also result in unnecessary consumer confusion caused by differing sets of rules for variable IRA annuities and other annuities. The life insurance industry has raised these concerns in its comment letters and in meetings with Department staff,[4] but to date we have not heard the Department articulate a reasonable basis for removing variable IRA annuities from PTE 84-24. We urge the Department to reconsider its approach, in light of the substantial market disruption and harm to retirement savers that would result.

Further, the continued availability of PTE 84-24 for variable IRA annuities is not the status quo. The proposed changes to PTE 84-24, in particular the "best interest" standard of care contained in the exemption's new "impartial conduct standards" requirement, would provide enhanced consumer protections. As we and our industry trade groups have stated in our earlier comment letters, we support a best interest standard for retirement advice and believe that its addition to PTE 84-24 is workable, provided certain changes are made to the "best interest" definition and other parts of the exemption to make it usable in the retirement market.[5]

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[3] See page 6 of the Lincoln Financial Group comment letter submitted on July 21, 2015.

[4] See pp. 5—11 of the Lincoln Financial Group comment letter submitted on July 21, 2015, for a discussion of the importance of variable annuities in the retirement market, and pp. 11 and 15—16 for a discussion of the ways in which the BIC exemption as proposed would harm variable annuities and the consumers who need them.

[5] Changes are needed to the "best interest" definition in PTE 84-24 to make it consistent with the Department's own public statements about the meaning of this term, and to make the revised exemption usable. In addition, changes to other parts of PTE 84-24 are necessary in order for this exemption to continue to have utility in the retirement market, including changes to the definition of "insurance commission" and other parts of the exemption so that it covers all forms of compensation attendant to the sale of an annuity. For more specifics about these needed changes, please see pp. 11—15 of the Lincoln Financial Group comment letter submitted on July 21, 2015), as well as the comment letters filed on behalf of the industry by the ACLI (pp. 18—22), the IRI (pp. 33-34) and the CAI (pp. 20—23).

Variable Annuities Are Insurance Contracts And Are Legally And Fundamentally Different From Mutual Funds.

In the August 24 meeting, the Department expressed concern that if variable annuities were excluded from the BIC exemption and covered under PTE 84-24, that mutual funds would be able to structure themselves as variable annuities "in name only" to avoid the BIC exemption requirements. Again, this concern is misplaced and appears to be based on a misunderstanding that variable annuities are the same as mutual funds. Variable annuities are fundamentally different from mutual funds. The Investment Company Act of 1940 (the "1940 Act") defines a "variable annuity contract "as an "accumulation or annuity contract, any portion thereof, or any unit of interest or participation therein pursuant to which the value of the contract, either prior or subsequent to annuitization, or both, varies according to the investment experience of the **separate account** in which the contract participates." The 1940 Act further defines a "separate account" as an account **established and maintained by an insurance company** pursuant to the laws of any state or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains or losses of the insurance company.

As this definition makes clear, variable annuities are insurance contracts, which can only be issued by a duly licensed insurance company. Insurance companies are highly regulated by the states, subject to state insurance law and reserving requirements, and subject to supervision and examination by state insurance departments. The contracts they issue are also subject to state review and approval. Because of this, it would be irrational for a mutual fund company to become an insurance company for the sole purpose of availing itself of PTE 84-24 and avoiding the BIC exemption requirements. For greater detail on the specific state insurance law requirements applicable to insurance companies, please see attached Appendix A, as well as the comprehensive appendix attached to the ACLI comment letter.

Proposed Changes To The BIC Exemption

In the alternative, if the Department concludes that the BIC exemption should be the only exemption available for variable IRA annuity sales, we urge the Department to make changes to the BIC exemption that better reflect the differences between annuities and other types of investment products that are covered under the BIC exemption. These revisions are documented in attached Appendix B.

As expressed in the hundreds of pages of comments filed during the public comment period and during the public hearings, the BIC exemption must be simplified so that firms that offer annuities can and will rely on it. We do not believe that converting our businesses to fee-only advice models for all retirement savers is in their best interest. Fee-based models do not fit with the way annuities are used by consumers. We propose that the Department enhance Section VI[6] of the BIC exemption – the "Insurance and Annuity Contract" section that is already part of the BIC exemption. These enhancements would include:

- An annuity-specific definition of "reasonable compensation" that accounts for the value of the insurance guarantees and other benefits inherent in an annuity product, and the extensive up-front consumer education that is required for annuity product sales. This change would make clear that insurance commissions that are higher than mutual fund commissions, or that are initially higher than fee-based compensation, are reasonable provided they are consistent with customary compensation practices in the annuity marketplace. It would also expressly permit insurers to maintain their "statutory employee"

[6] In the attached markup, the annuity section of the BIC exemption is Section V, because we propose removing Section IV of the exemption entirely. See the attached BIC exemption markup at Appendix B for supporting rationale.

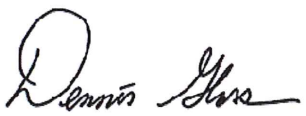
programs. The topic of statutory employee programs was something that the Department requested more information on at the August 24 meeting. Please see attached Appendix C for more details about insurance company statutory employees.

- An annuity-specific definition of a "material conflict of interest" that would make clear that an insurance commission that is higher than a mutual fund commission or that is initially higher than a fee-based compensation arrangement is not by itself evidence of a conflict of interest.
- Disclosures that are tailored to annuity products. This disclosure would cover a description of the contract and its benefits, advisor compensation (defined as insurance commissions), other payments to the advisor or the selling firm, compensation to the insurance company (other than "spread", see below), product manufacturer affiliations and contract charges.
- In response to the Department's questions about insurance company "spread" at the August 24 meeting, we propose that insurance company "spread" be expressly excluded from the disclosure requirements and the "reasonable compensation" definition, because it is not something that can be known or quantified over any particular period. For example, in the case of a fixed annuity, or the fixed component of a variable annuity, spread is the difference between the fixed return credited to the contract holder and the insurer's general account investment experience. The spread can be positive or negative and is not known in advance, or at any point in time during the life of the contract. Until the insurer's performance under the contract is complete, it will not know whether it has lost money, covered its costs or perhaps gained a profit on that contract. As noted by the ACLI in its July comment letter (at page 36), spread is earned by financial institutions on a wide range of products (e.g., bank deposits), and is more appropriately thought of as investment earnings as opposed to compensation. As the ACLI points out, the Department has agreed with this in other regulatory contexts and should also do so here.[7]

We also propose several changes to the BIC exemption for all products sold in reliance on it, including annuities. The intent of these proposed changes is to greatly simplify it and remove unnecessary administrative burdens so that firms will be able to use the BIC exemption to cover the sale of all retirement investment products, including annuities. Many of these are changes that were specifically requested by Lincoln and other individual insurance companies, as well as industry groups, during the comment period that ended in July. The attached mark-up in Appendix B provides more detail about these proposed changes and supporting rationale.

Thank you for the opportunity to comment on this important initiative.

Sincerely,



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

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[7] See Q and A 22 of the 2009 Form 5500 Schedule C Frequently Asked Questions (which has been interpreted to require disclosure on Schedule C of reductions in an insurance contract's crediting rate to cover plan recordkeeping expenses, but to not require disclosure of spread). See also DOL Regulation Section 2550.408b-2(c)(1)(iv)(E) and (F) which require disclosure of operating expenses only for investments that do not have fixed returns, and DOL Regulation Section 2550.404a-5(d)(1)(iv)(B), which requires only disclosure of "shareholder-type fees" such as surrender charges, and liquidity restrictions.

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Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW, Suite 400
Washington, DC 20210

Re: Definition of the Term "Fiduciary:" Conflict of Interest Rule (RIN 1210–AB32)
Proposed Amendment to Proposed Partial Revocation of Prohibited Transaction Exemption 84-24 (ZRIN 1210-ZA25)
Proposed Best Interest Contract Exemption (ZRIN 1210-ZA25)

To Whom It May Concern:

Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates (collectively, "Lincoln"). Lincoln appreciates this opportunity to provide the following comments on the Department of Labor's ("Department's) proposed fiduciary advice regulation and related prohibited transaction exemptions (the "Proposal").

Summary of Position

Founded in 1905, Lincoln has been in business for 110 years, making us one of oldest insurance companies in the United States. Through our subsidiaries we design, manufacture and market a wide range of retail insurance and investment products that provide accumulation, protection and guaranteed lifetime retirement income to Americans of all income levels. These products include fixed and indexed annuities, variable annuities and employer-sponsored retirement plan recordkeeping and administrative services. Today, Lincoln is one of the largest insurance companies in the retirement market, serving more than 2.4 million retirement plan and IRA customers.

We strongly believe in the competitive value of our products and the excellence of our services. We stand behind this by distributing the majority of our products through financial advisors who have no obligation to sell our products. These advisors can and do evaluate and compare products across the marketplace, and recommend those that they believe bring the best value to the clients that they serve. We believe that this "open architecture" model of distribution provides a great benefit to retirement savers when they receive individualized financial planning from their advisors.

At Lincoln, we believe that insurance products with lifetime income guarantees have never been more vital for helping consumers achieve their retirement objectives. Historically, lifetime income guarantees were available to middle class Americans through employer-sponsored defined benefit plans. However, the number of traditional pensions has decreased significantly over the past several decades. In 1985, private pension plans accounted for

almost 50% of retirement savings; in 2014, this number had decreased to less than 20%.[1] Defined benefit plans have been replaced with defined contribution plans, such as 401(k) plans, in which the savings burden is largely shifted to employees. This burden is not one that most employees are well-equipped to bear. Wage stagnation has ensured that middle income savers have less money to set aside for retirement than ever before. Most retirement savers also lack investment expertise, a fact that became painfully apparent during the 2008 financial crisis, when trillions of dollars of household wealth was destroyed. At the same time, the future availability of Social Security as the primary source of retirement income remains in doubt, a problem that becomes more acute as baby boomers begin to retire. In this environment, consumers cite increasing concern that they will not have enough money to live comfortably in retirement,[2] burden their children, and live in poverty at the end of their lives.

In this era of do-it-yourself retirement planning, the American middle class desperately needs help to ensure its own retirement security. The insurance industry, with its unique ability to turn individual savings into guaranteed income for life through annuities, is well positioned to address this need. In this regard, we point out that today, less than 5% of retirement savers who are covered by a defined contribution plan have access to guaranteed lifetime income through that plan. For the remaining 95%, and for the many retirement savers with no access to an employer-sponsored plan, the only way to get these protections is through an individual fixed or variable IRA annuity.[3]

Lincoln agrees with the Department that retirement savers should receive investment advice that is in their best interest. To achieve this goal without limiting consumers' access to vital lifetime income protections, we recommend changes to the Proposal that focus on the following areas:[4]

- Ensuring that products with guarantees are not hamstrung under the Proposal, by retaining a workable exemption for the sale of commissionable investments. In particular, PTE 84-24 should continue to cover variable annuity transactions and the Best Interest Contract Exemption (BICE) should not unfairly handicap annuity sales.
- Modifying the proposed "Best Interest" standard and the BICE to better reflect today's marketplace, existing business models and regulatory realities.
- Prospective application of the final regulation and a transition timeline that takes into consideration the massive change that will be required.
- Narrowing the scope of the fiduciary definition so that insurance companies can continue to provide critical services to small businesses and middle income retirement savers as a product manufacturer and retirement plan record keeper.

Annuities with guarantees are demonstrably different from mutual funds and other investments that provide no guarantee and should be treated differently, so that they are not unfairly handicapped by the regulation. Guarantee purchases are long-term "buy and hold" investments with durations that can reach 30 years or more. (These long-term durations are not theoretical: for Lincoln's annuity business, redemptions were only 7% of

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[1] IRI Factbook 2015

[2] 2015 Annual consumer tracking survey by EBRI, 41% of **workers** are *not confident* that they will have enough money to live comfortably throughout their retirement years. This represents an increase from 29% in 2007.

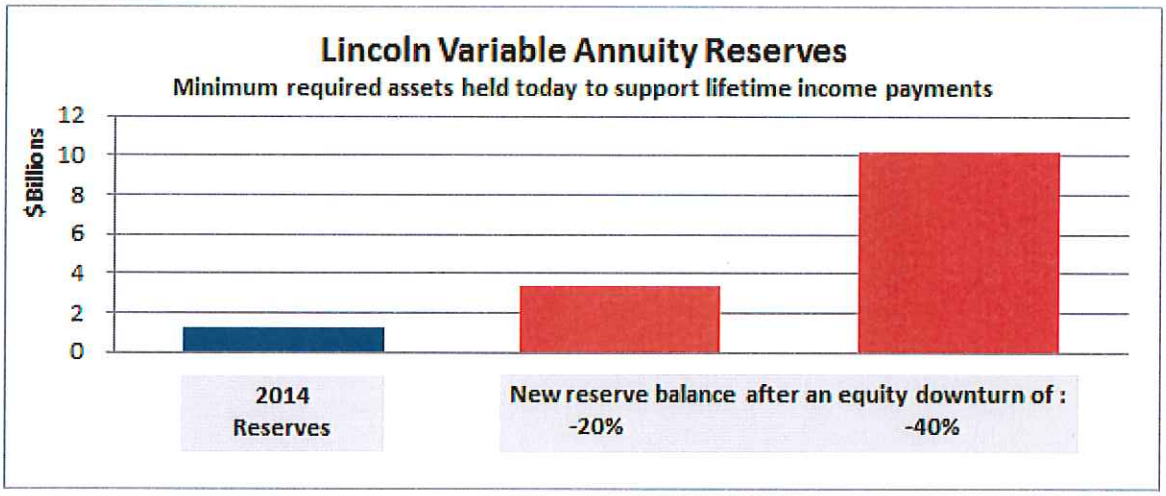
[3] LIMRA Secure Retirement Institute "In-plan Income Guarantee Availability and Election Tracking Survey – 2014" (guaranteed income products available in 33,500 qualified plans representing less than 5% of all plans and less than 1% of defined contribution assets)

[4] Lincoln has prepared specific recommended changes to the Proposal, which are set forth in Appendices A, B and C. Appendix A focuses on PTE 84-24, Appendix B focuses on the BICE and Appendix C contains recommended changes to the proposed investment advice regulation.

account values in 2013 and 2014, whereas the mutual fund redemption rate during this time period was in excess of 24%.[5]) Savers pay an annual fee for an option to receive guaranteed lifetime income in the future that does not decrease in falling markets. This option is provided through a contract with the insurance company. This effectively creates a second safety net for retirement savers. The first is the nest egg itself and mutual funds can certainly be a vehicle for setting aside that savings. The second is the insurance company's guarantee that the nest egg will support a lifetime income stream that will not lose value in falling markets.

Mutual funds cannot provide this future protection. In fact, the value of a mutual fund is based on its past performance and there is expressly no guarantee that this performance will continue in the future. The asset manager has no risk or obligation to set aside reserves and, consequently, can simply charge a fee for the service of investment management. By contrast, an annuity does guarantee a future outcome, and an insurance company is required by state insurance laws to set aside reserves to ensure that those guarantees will be met. The amount of required reserves varies considerably with market movements. Insurance companies, rather than retirement savers, bear this risk.

The exhibit below shows how much Lincoln's risk, and resulting reserve requirements, can increase when there is a market downturn. It shows clearly that the risk associated with providing guarantees is very real and can be substantial.



If the final rule handicaps the availability of guarantees and/or creates uncertainty for advisors in recommending guarantees, then the result will be that more savers will bear the risk of down markets and potentially sacrifice their retirement security. Traditional asset manager fee for the service of investment management will not provide the retirement income security that middle class Americans desperately need.

There are good reasons for retirement savers to choose to pay for investment advice relating to long-term investments such as insurance guarantees through commissions. Consumers who consider buying an insurance product need to first determine that the product is right for them, and that they are paying the right price for it. These are obviously considerations for any purchase, but they are even more critical given the long term and financially significant commitment that an insurance product purchase requires. This is particularly true for middle income savers, who do not have a lot of money to set aside. For them, this is a very big decision.

[5] 2015 Investment Company Factbook, Investment Company Institute

Selecting the right product requires extensive and personalized education about the many types of products available (e.g., variable annuity with guaranteed income benefit, immediate annuity, deferred income annuity), their various benefits and features, and associated costs. To assist consumers with this, financial advisors use advanced planning tools that clearly depict in easy, visual terms the comparison of investment options and income that will be distributed through various products. This analysis is specific to each client's particular needs and is essential for comprehensive planning. Insurance companies also provide financial advisors with detailed and personalized illustrations of their products' projected future benefits, to use with their clients. Over the last five years, Lincoln has provided over 1.4 million of these illustrations to financial advisors. Not surprisingly, discussing all of this information with customers takes a significant amount of time and effort. For a Lincoln financial advisor recommending an annuity as part of a client's holistic financial plan, it generally involves at least three one-hour face to face meetings and many hours of work behind the scenes. This thorough analysis is in stark contrast to a simple mutual fund investment, where none of this up front time and effort is necessary. Mutual funds are routinely purchased by consumers who only receive a prospectus and a past performance track record without any projection, much less promise, of a future result.

In addition, because of the length of the commitment, buy and hold investors generally pay less for advice through commission-based arrangements than they do under fee-based arrangements. Consumer preferences validate that commission-based compensation structures are an important option that must remain an available choice for retirement savers. A recent study shows that consumers across all income levels prefer to pay for financial services through commission-based compensation (40%) than through asset-based fee compensation (30%)[6]. In the end, commission-based compensation is not a mechanism for maximizing advisor compensation, as the Department appears to assume. Rather, it is often the model that best reflects the services being provided and is the most fair to the consumer.

It therefore makes sense that annuities have been sold on a commission basis for over 30 years under prohibited transaction exemption (PTE) 84-24. The Proposal's bias against commission-based compensation structures should be eliminated so that retirement savers continue have a choice in how they pay for advice.

In addition, a "best interest" standard of care to protect retirement savers makes sense. However, this standard, along with all other requirements of any prohibited transaction exemption, must be workable so that the exemptions can actually be used.

Lincoln also believes that any final regulation should be applied on a prospective basis and provide a reasonable timeline for implementation that takes into consideration the realities of the marketplace, the millions of savers currently being served who would be disrupted, and the technology and administrative system builds and industry training that would be required to ensure compliance.

Last, employers and savers should not lose access to important services such as retirement plan enrollment and participant education services, and product-related customer services, because of an overly expansive definition of fiduciary advice.[7]

With our recommended changes, the Proposal will advance the goal of increasing middle class Americans' retirement security rather than thwarting that goal by limiting access to critical insurance products with lifetime guarantees. The changes to the Proposal set forth in this letter will also ensure that financial advisors can

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[6] Phoenix Marketing International, Cerulli Associates "Clients' Preferred Fee Structure by Investable Assets, 2013

[7] The attached Appendix C contains specific recommended changes, and the arguments supporting these changes, to the proposed investment advice regulation so that insurance companies can continue to provide critical services to small businesses and individual retirement savers as product manufacturers and retirement plan record-keepers.

continue to help consumers understand the financial products and solutions available to them and determine which one is the right product, at the right price, for them.

I. The Importance of Annuities in the Retirement Market

As noted above, unlike mutual funds, annuities provide a wide variety of benefit options that can protect against an untimely death, provide principal guarantees, assure a specified amount of income when the contract is annuitized, and guarantee income for life. These protections have historically been available to low and middle income savers through employer-sponsored defined benefit plans. However, the number of traditional pensions has plummeted over the past several decades and today, the vast majority of American workers who are covered by an employer-sponsored retirement plan are in a defined contribution plan, which typically does not offer any of these protections. The insurance industry is actively working to correct this by developing guaranteed lifetime income products for the defined contribution plan marketplace. But employer adoption has been slow—impeded in part by regulatory hurdles that the Department is well aware of—and today access to these products in defined contribution plans is very limited. **This means that individual fixed and variable annuities are the only way for these workers and for the many retirement savers without access to an employer-sponsored plan to get access to guaranteed lifetime income.** Retirement savers acutely need this access. Nearly two thirds (64%) of pre-retirees do not expect to receive enough income from Social Security and employer pensions to cover their basic living expenses in retirement.[8] Retirement savers recognize that annuities are an important way to cover this shortfall: over half (52%) of deferred annuity buyers purchase the annuity to supplement Social Security or pension income.[9] Importantly, this includes middle income savers. According to a 2013 Gallup survey of individual annuity owners, the median household income of individual annuity owners is $64,000, and 80% have total annual household incomes under $100,000. Six in ten (60%) are below $75,000 in annual household income and over one-third (35%) are below $50,000.[10]

The Secretary of Labor has spoken of Americans' retirement security using the common analogy of a three-legged stool. The first leg is Social Security and the second and third legs are personal and employment based savings. In a recent speech, the Secretary made the case for strengthening the legs of this stool and stated his belief that the private sector has an important role to play.[11] We agree and would like to emphasize in particular the vital role that insurance products play today in holding up that stool. Seventy-five million Americans currently rely on the guarantees and protection that only the life insurance industry can provide. Life insurance companies pay out $1.5 billion in benefits every day to American families, and 20% of Americans' long term savings are in insurance products. Handicapping advisors' and insurance companies' ability to continue bringing these important protections and benefits to American savers, as the Proposal threatens to do, weakens rather than strengthens the retirement stool.

These critically important insurance protections are frequently delivered through variable annuities, which offer a wide variety of guarantees to protect a retirement saver's investment. Living benefit features protect against investment and/or longevity risk by providing guarantees that cover income, accumulation, and withdrawals for either a fixed number of years or for life. Death benefits provide principal protection in the event a retirement

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[8] LIMRA Secure Retirement Institute, *LIMRA Retirement Study*, 2012

[9] LIMRA Secure Retirement Institute, *U.S. Deferred Annuity Buyer Attitudes and Behaviors,* 2014

[10] Note that this survey only looked at nonqualified annuities, but the results clearly reflect the value of annuities generally to middle income retirement savers.

[11] Remarks by U.S. Secretary of Labor Tom Perez to the Brookings Institution, The Hamilton Project, Forum on Promoting Financial Well-Being in Retirement, Washington, DC, June 23, 2015 ("The second and third legs of the stool, which need fortification, are personal savings and employment-based savings. We need to tighten the bolts on both of them, and both the federal government and state governments — and the private sector — can play a critical role.")

saver dies during a market downturn. The unique benefits of variable annuities are squarely in line with the Department's desire to ensure that Americans have access to guaranteed lifetime income in retirement.

A. Variable Annuities with Guaranteed Lifetime Income

Guaranteed lifetime income is a unique feature available in variable annuity contracts that provides retirement savers the opportunity to invest in mutual funds, index funds and exchange traded funds, while also having a guaranteed lifetime income stream that is protected from market downturns. This is done by investing the individual's savings in a portfolio of funds within the variable annuity contract that will appreciate in value when the markets rise. This market appreciation is locked in periodically for purposes of determining the saver's guaranteed lifetime income payments, meaning they can increase with market appreciation but will never decrease (as long as the saver's withdrawals do not exceed the guaranteed income amount). One cannot say the same about mutual funds, bonds, or even Social Security benefits.

Retirement savers recognize the enhanced security that these products give them. As one responder to a 2011 Lincoln study indicated, "Annuities gave us a feeling of independence and security that you don't have to worry about the markets going up and down. That security was like the same feeling as knowing that your kids are doing well. It's really a comfort level. My parents lived until their 90s. I expect to have a long, full, healthy life. I don't want to be in a position where I have to depend totally on Social Security or food stamps or whatever the government has to give me. It means standing on my own. Knowing that money is there means I won't be dependent on our children. It means I'm independent."[12]

It is therefore not surprising that over the past decade, the popularity of variable annuities with guaranteed lifetime income has increased. In 2014, over 70% of industry variable annuity sales were in products offering these types of benefits.[13] In fact, the lion's share of guaranteed lifetime income today is being delivered through variable annuities. Of the total $564 billion in guaranteed income sales over the last five years, 75% was through variable annuities.[14] And at Lincoln, just over 70% of variable annuity contracts provide lifetime income benefits, amounting to $73.4 billion in variable annuity assets under management. [15]

Like the responder to the Lincoln study, 83% of retirement savers who purchase a variable annuity do so with the intent of using the annuity as a source of secured retirement income for life.[16] Variable annuities are popular because they allow retirement savers to participate in the market as they would in a mutual fund, while also having access to a variety of benefit payment options not available in mutual funds, including guaranteed payments for the life of the retirement saver (and if the saver chooses, for the life of his or her spouse). As the Lincoln study respondent noted, variable annuities also address Americans' increasing uncertainty that Social Security will provide them with adequate, or even any, retirement security in the future.

The potential advantages of guaranteed lifetime income can be illustrated with a recent real life example involving an actual Lincoln customer:

Retiree Betty Wright had $500,000 in savings, spread across a fee-based IRA account and a trust. In 2005, she had nearly depleted her IRA assets and wanted to maintain her lifestyle in retirement and provide for her family. To keep her other assets intact, and obtain guaranteed lifetime income, her financial advisor recommended investing

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[12] Lincoln i4Life® Study, 2011

[13] IRI FACT BOOK 2015, A Guide to Information, Trends, and Data in the Retirement Income Industry

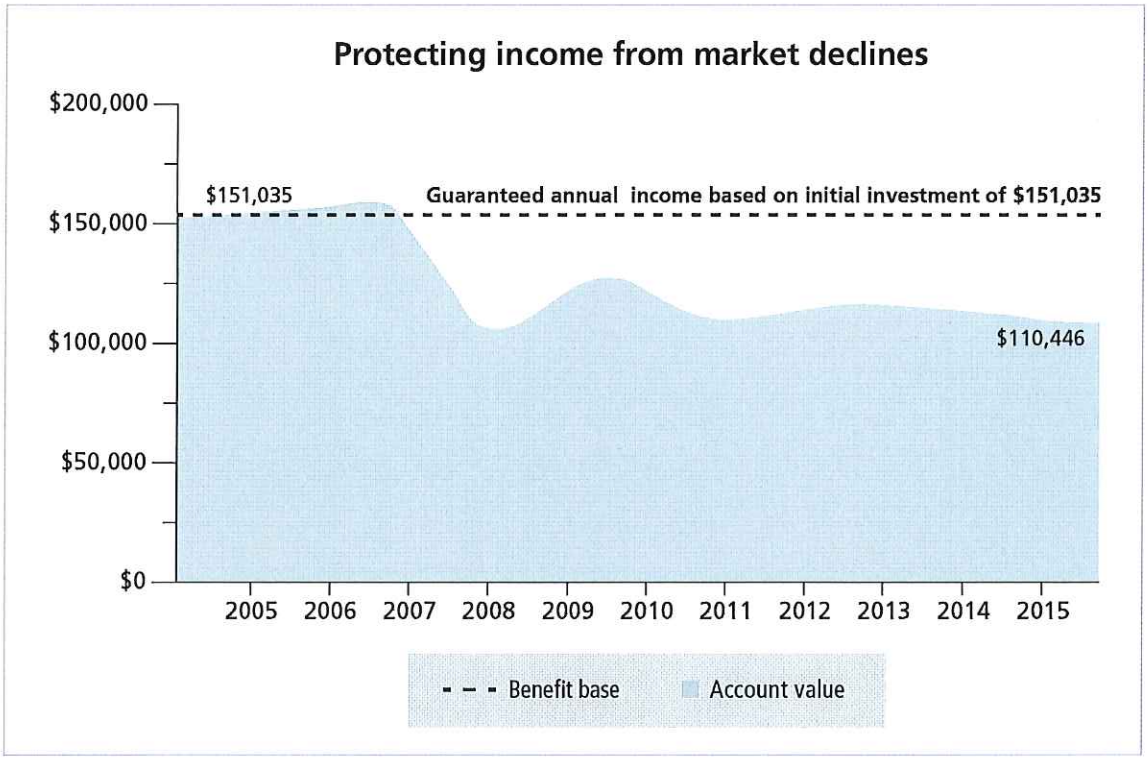
[14] LIMRA Secure Retirement Institute, U.S. Individual Annuity Sales Survey (2010-1Q2015)

[15] As of March 31, 2015.

[16] The Gallup Organization with Greenwald & Associates, 2013 Survey of Non-qualified Annuity Contracts

the remaining $151,035 in her IRA account in a variable annuity with a lifetime income guarantee benefit. After the market crash in 2008, the account value fell to $122,000. However, her guaranteed monthly income payments of $608 were not affected in any way because they were based on her higher initial investment. In addition, because of later positive market performance, in some years she was able to receive additional income over her guaranteed $608. In 2015, she continues to draw on this monthly income and will do so for life. Had Betty placed her IRA assets into a traditional mutual fund or remained in the fee-based account, there would have been a dramatic impact on her account value that would not have produced the same level of monthly income.

The graphic below shows how Betty's guaranteed lifetime income protected her in this example.



There are numerous other similar real-life examples. Two more are described below, both showing how consumers, including those with modest savings, can and do benefit from guaranteed living benefits.

Example 1:

In 2007, Alice Flamini was referred to a financial advisor to help her gain a better understanding of the investments she inherited from her husband who had recently passed away. Her main concern was income. She owned a handful of individual stocks, bond mutual funds and a fixed annuity. The total value was $75,000. She was overwhelmed by the number of investments she was dealing with and she was barely getting by with her current income. Her advisor totaled up her assets and ran an annuity illustration with a guaranteed living benefit. She purchased the annuity and started taking income immediately. The following year (2008), the market crashed. The annuity had a guaranteed income floor and even though the account value fell, Alice's income level was unchanged. Since opening the contract, Alice has withdrawn nearly $35,000 from the contract and has been very happy that her purchase helped her maintain a dignified lifestyle in retirement.

Example 2:

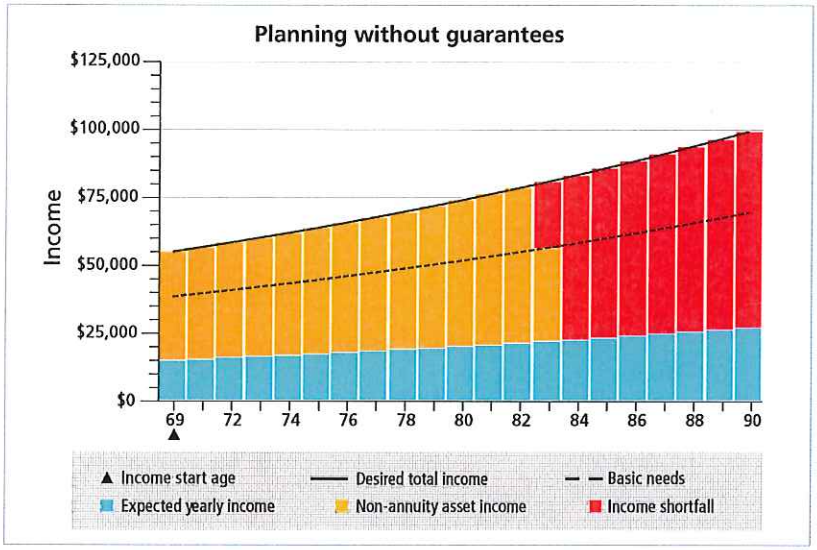
In 2007, a customer[17] purchased a variable annuity contract with a living benefit for $731,000. After the market crash in 2008, the account value fell to $484,276. Frightened by the market decline, the customer asked his advisor to liquidate the annuity and move it to cash like so many other investors did during this time. His adviser reminded him that the benefit he had purchased protected the benefit base at his initial investment level for income. The client was relieved and did not liquidate his annuity. At any time, this client could begin taking a guaranteed lifetime income in an amount based on his initial $731,000 premium, even though the account value was much lower. By staying invested as advised because of the income protection, this client's account value had nearly fully recovered by 2013. In 2013, the client began taking income from his contract based on his initial $731,000 premium. To date, he has received more than $135,000 in total income from the contract and his account value has grown steadily. Had his money been invested in stocks and mutual funds, there would have been nothing in place to protect his income. If he had not had the help of his adviser, he most likely would have moved his money to the sidelines, missed the recovery in the market and would now be forced to either withdraw a much higher percentage from a smaller pool of money to fund his retirement and risk exhausting his retirement assets too soon or withdraw a smaller amount to stretch the smaller pool of retirement assets for his lifetime.

As these examples show, participation in the market when it does well, protection when it does poorly, flexibility and independence are all strong reasons why variable annuities make sense for so many retirement savers, particularly those with limited assets that need to last through retirement. In the aftermath of the 2008 financial crisis, none of these success stories would have been possible without the protection of the insurance guarantees that these savers were able to get through variable annuities.

With the decline in defined benefit plans and increasing uncertainty over the future of Social Security benefits, annuities are increasingly becoming a central part of the retirement income planning process for retirement savers and their financial advisors. The hypothetical example below has been used by financial advisors to show middle income retirement savers how a variable annuity can secure a reliable and adequate income stream that cannot be outlived, even with a modest investment amount:

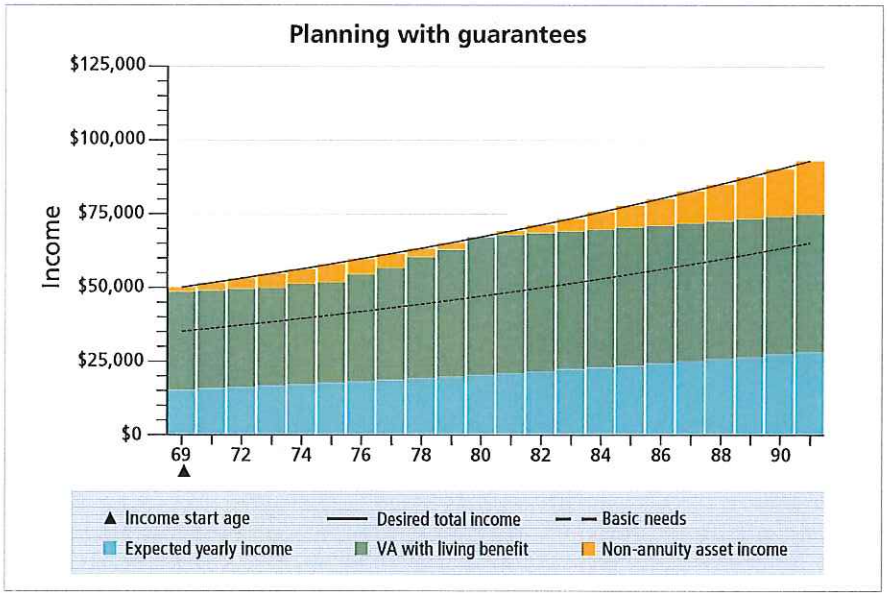
- Bob and Harriet were 64 years old. They wanted to retire in 4 years and plan for income that would cover their life expectancy.
- They were most concerned about having enough income throughout their retirement that would cover both their basic needs and, if possible, life's extras.
- Working with a financial advisor, they knew they needed at least $40,000 a year to cover their basic needs and it needed to keep pace with inflation. They were hoping to have $15,000 additional each year as a cushion to protect against unknown events.
- The advisor ran an illustration, shown below, which clearly showed them the real risk they faced of running out of income less than 15 years into their retirement (note that "expected yearly income" represents expected Social Security income).

[17] Unlike the other two case studies, we were not given permission to identify this customer by name.



Returning to the three-legged stool analogy, picture the three legs being (1) Social Security income, (2) non-annuity asset income (shown in yellow above) that can run out and (3) lifetime annuity income that cannot run out. The picture above indicates that for this couple, the retirement security stool is quite wobbly, because it only has two legs. The non-annuity asset income will only cover them for the first 15 years of their retirement. Since at 64, they are likely to live longer than 15 more years, they face a real risk of living in poverty at the end of their lives, with nothing but Social Security, itself an uncertain resource, to rely on. But the story continues:

- The advisor then presented an annuity illustration with a lifetime income benefit.
- By repositioning their assets into the annuity, their basic needs were projected to be completely covered by the lifetime income feature and their non-annuity assets could be used to help them maintain their lifestyle throughout their retirement.
- Additionally, if Bob or Harriet were to pass away, the survivor would be able to continue receiving guaranteed income for his or her lifetime.



Continuing the retirement security stool analogy, with the purchase of an annuity, this couple added the crucial third leg. With the guaranteed lifetime income provided by the annuity added to their non-annuity asset income and Social Security income, this couple has now ensured that their savings will last for the rest of their lives.

This example also illustrates the level of personalized time, attention and individually relevant information provided to prospective buyers of annuity products. This level of advisor and consumer engagement on a single investment decision, along with future projections of outcomes, cannot be obtained by dialing an 800 number, or with an online investment tool, such as a robo-advisor. We believe that these limited services, with their standardized assumptions and the limited amount of personal information they consider, not to mention their lack of any element of human judgment, would not be appropriate for a consumer who is deciding whether to purchase an annuity. The SEC has recognized the limitations, and even potential dangers, of automated investment advice and has alerted the public to this concern.[18] We urge the Department to further consider the limitations of these services as well.

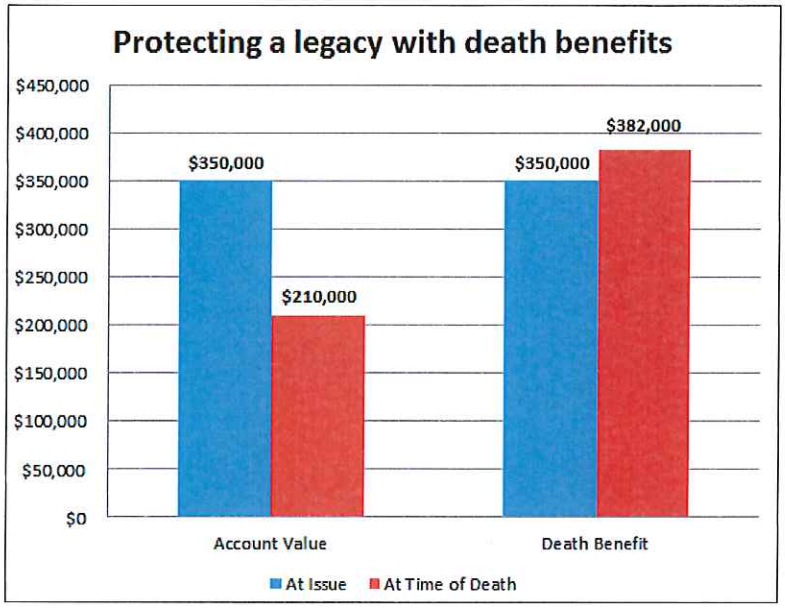
B. Variable Annuity Death Benefits

Another major benefit of a variable annuity contract is the existence of a death benefit. When the retirement saver dies, his or her beneficiary is generally guaranteed to receive no less than the original investment, less any benefits that have been paid. The following example involving an actual Lincoln customer illustrates this:

A 73 year-old customer purchased a $350,000 annuity with a death benefit, naming his wife as the beneficiary. During the 2008 financial crisis, the account value was reduced dramatically. However, the death benefit option the customer chose locked in the all-time contract high of $382,000. The customer died in January, 2015. At the time of his death, his contract was worth $210,000 due to income withdrawals and market performance. Thanks to the death benefit, his spouse received the locked in amount of $382,000 which was more than $170,000 greater than the account value and more than $30,000 higher than the initial investment.

The graph below provides a visual picture of this benefit to this customer:

[18] SEC Investor Alert: Automated Investment Tools (May 8, 2015), available at http://www.sec.gov/oiea/investor-alerts-bulletins/autolistingtoolshtm.html



Value of the Annuity

- Annuity death benefit guaranteed—no principal loss
- Surviving spouse has peace of mind and retirement security
- Mutual fund, exchange traded fund or index fund would have resulted in loss of 38% with no guarantee for the spouse

Since 2001, Lincoln has paid out nearly $600 million more in death benefits than the market value of the related contracts. This is nearly $600 million in benefits that would not have been paid to retirement savers' beneficiaries had the retirement accounts been invested in mutual funds. Over half of this amount ($324 million) was paid in the years 2008—2010 as a result of the 2008 financial crisis. This is a powerful and recent reminder of the value of insurance guarantees and how they come through when people need them the most.

II. PTE 84-24 Should Continue to Cover the Sale of Variable Annuities to IRA Owners

Commissions and other related compensation have been allowed by ERISA PTE 84-24 for the sale of variable IRA annuities for over 30 years. In the Proposal, the Department suggests taking variable IRA annuities out of the scope of this exemption. This change is a mistake for several reasons.

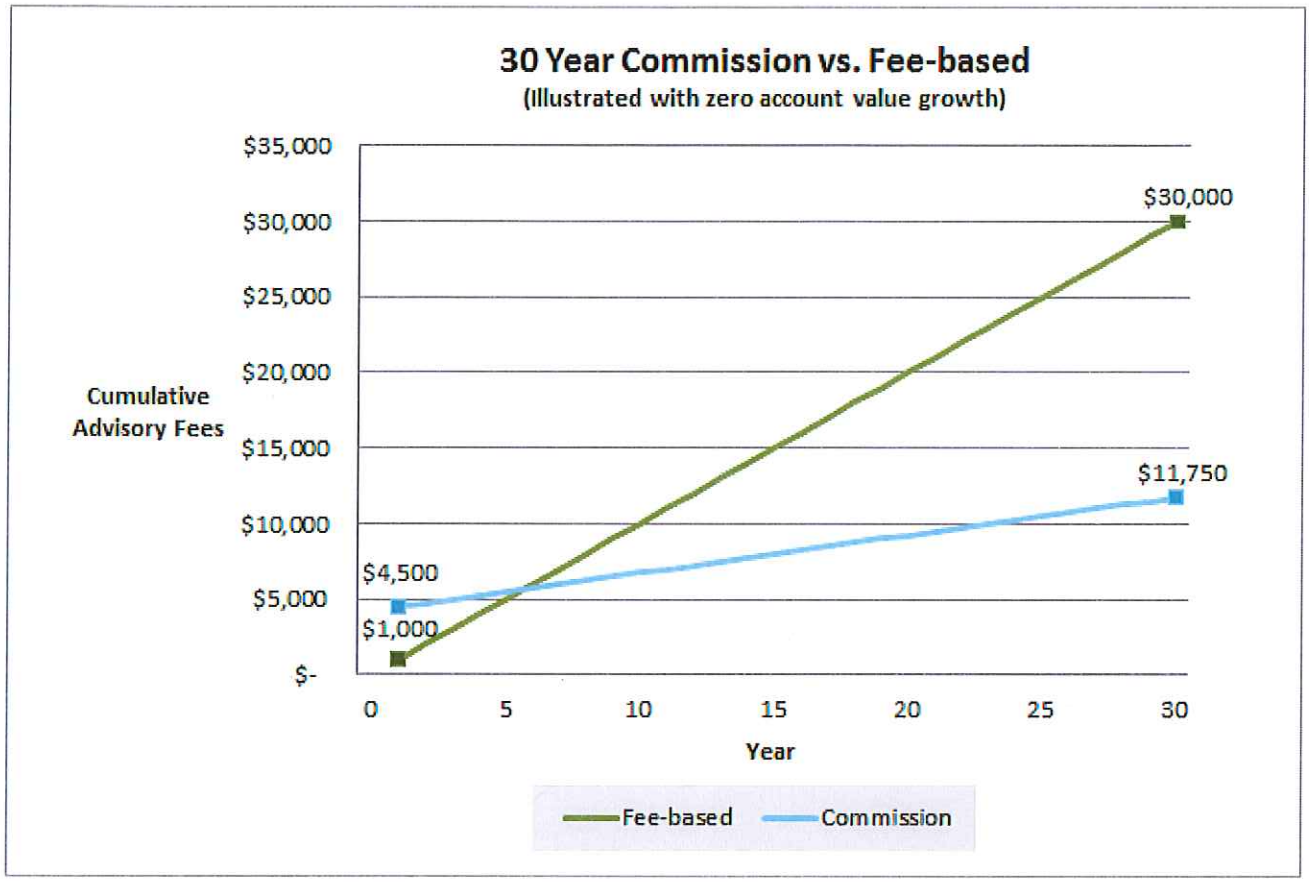
First, the proposed change is based upon an apparent misunderstanding of how variable annuities work. The Department's rationale for excluding variable IRA annuities from PTE 84-24 is that it "believes that the provisions of the Best Interest Contract Exemption better protect the interests of IRAs with respect to investment advice regarding securities products." This appears to be based on a belief that if a variable annuity is considered to be a security under the Federal securities laws, it must be just like a mutual fund. However, as explained above, variable annuities are not just bundles of mutual funds. They are, like fixed annuities, insurance products that provide critical lifetime income guarantees and death benefits to retirement savers. The BICE, as currently written, with its focus on fees/expenses and investment performance comparisons, would harm insurance products because a significant portion of product fees pays for insurance guarantees, not only investment management. We are very concerned that this would discourage firms and financial advisors from recommending annuities, when they are in a consumer's best interest, out of fear that it will be viewed in hindsight as too costly in relation to the product's investment performance. As our graphic exhibits above demonstrate so clearly, cost and performance alone are not appropriate criteria for evaluating a consumer's need for insurance products with guarantees.

In addition, the product-neutral, continuing fee-for-advice compensation structure favored by the BICE may work for asset managers providing ongoing advice to high net worth investors, but it does not work for insurance companies who manufacture and offer guaranteed insurance products to consumers of all economic levels. In

fact, and as noted earlier, many consumers prefer commission-based compensation structures over fee-for-advice structures. This preference makes particular sense for insurance products, which are typically very long-term commitments, requiring a legal contract that can bind the insurance company for 30 years, or more. Mutual fund investments do not require this "buy-and-hold" commitment; investors typically buy and sell mutual funds continuously in response to market conditions, often, appropriately in this case, with ongoing fee-for-service advice.

This underscores again the fact that retirement savers deserve and need to fully understand how an insurance product will work for them before committing to a long-term investment in that product and paying for insurance protections that are not reflected in investment performance. Retirement savers get this through individualized quotes, illustrations and product explanations from their financial advisors, who spend significant amounts of time helping them to determine whether to make a purchase decision. This does not happen with mutual fund investments, where investment decisions are often made based on standardized information and materials such as (in addition to the prospectus) forms and questionnaires, generic FAQs developed by the fund issuers and general performance benchmark information. This difference explains why most insurance products are commissions-based. With an insurance product, the commission structure more appropriately reflects the extensive and personalized services provided, and generally results in lower long-term costs to consumers versus a continuing fee for advice (fee-based) structure. In fact, one of the more striking aspects of our conversations with financial advisors is how many have shared that they will earn more if they move from a commission-based compensation model to a fee-based model. The Department is rightly concerned about the effect of high advisor compensation and fees on long retirement savings accumulation. However, it would be a mistake to assume that fee-based compensation models are always better for retirement savers than commission-based models.

This is not just our opinion—we did the math. Below is a graph exhibit which depicts the cumulative compensation a financial advisor would earn over a long term holding period (30 years). As shown below, financial advisors do not necessarily make more money from commission-based sales than they do from fee-based sales. In the case of long-term purchases, financial advisors often earn less under the commission-based model. We show this with an example of a $100,000 annuity purchase of a typical B-share class variable annuity providing an upfront 4.5% advisor commission and a 25 basis point ongoing advisor commission for service, compared to fee-based advisor compensation of 1%. For simplicity, we show a zero rate of return. The commission-based model pays higher compensation in year one, but the fee-based model pays much higher compensation over the long-term:



The exact point at which a buy-and-hold investor pays less than in a comparable fee-based arrangement depends on a variety of factors, including the cost of the fee-based program, investment returns and the level of annuity commissions, but there is no real question that paying a financial advisor for investment advice through commissions is a reasonable choice for many. This is not to suggest that fee-based arrangements are problematic or that commissionable investments are always preferable, but is to say that the manner in which retirement savers pay for advice should be a matter of choice. That choice is necessary because different types of financial products and compensation models provide different benefits, have different consumer impacts, and meet different consumer needs. To assume they are all alike and develop rules around a single preferred model fails to recognize this reality and ultimately harms consumers by limiting their access to important financial products and potentially more cost-effective services.

As we have explained, the factors that distinguish insurance product sales from sales of other investments have nothing to do with whether or not the investment in question is a security. Rather, they relate to the presence of long-term insurance guarantees, which requires different criteria for evaluating these products, and the different compensation structures for financial advisors who recommend them, which reflects the extensive and personalized services that the financial advisors provide. PTE 84-24 was built for insurance product sales and in its current form appropriately accommodates these differences for all annuities. For the reasons outlined above, it is critical that this exemption remain available for all annuity sales in the qualified retirement market.

III. PTE 84-24 Should Cover All Forms of Compensation Attendant to the Sale of an Annuity

PTE 84-24 allows a financial advisor to receive an "insurance commission" in connection with the purchase of an insurance or annuity contract by a plan or IRA if certain conditions are met. The Department proposes to amend

the exemption to precisely define insurance commission to mean only a sales commission paid by the insurance company or its affiliate for the service of effecting the purchase or sale. This definition includes renewal fees and trailers, but now expressly excludes revenue sharing payments, administrative fees or marketing payments, or payments from parties other than the insurance company or its affiliates. The Department's rationale for this change is only that it wants to provide certainty as to the types of payments allowed by the exemption. It states no reason why payments other than commissions, renewal fees and trailers should not be allowed. All of these types of payments are common in the industry and pay the financial advisor for the same things as traditional sales commissions do: effecting the purchase or sale of the insurance or annuity contract,[19] related services, including the individualized quotes, illustrations and personally relevant product information that goes into the sale, and ongoing customer service after the product is sold. If the Department has determined that insurance contract sales should be enabled through this exemption, it should allow all common forms of compensation attendant to the sale, regardless of the source, so that advisors who are fiduciaries can continue to provide the important personalized services that go with helping middle class Americans obtain guaranteed lifetime income. This would recognize the fact that, as in many other industries, sales compensation comes in many forms and from many sources. We also note that this would align with current regulations under ERISA section 408(b)(2), which recognize the reality of these other types of payments (e.g., revenue sharing and other third party payments, as well as expense-ratio type investment fees), and simply requires their disclosure. Provided that consumers' rights are protected through disclosure and reasonable compensation requirements, we can think of no policy reason for the exemption to disallow certain types of compensation. We urge the Department to ensure the utility of this exemption by expanding its scope to cover all compensation as long as it is reasonable in amount and disclosed.

In addition, we urge the Department to confirm that, where necessary, Section I(a)(4) of PTE 84-24 covers an insurance company's receipt of the compensation and profit (e.g., interest rate spread, contract fees, etc.) that is the necessary result of the sale. This exemption is critical for the sale of proprietary annuities by an insurance company, including its employees, and sales by financial advisors associated with affiliated selling firms. If the insurance company's compensation is not permitted, this exemption will have no utility for proprietary product sales, which we do not believe is the Department's intent.

IV. The "Best Interest" Standard Should Be Revised

In both PTE 84-24 and in the proposed BICE, the Department defines the "best interest" standard as requiring investment advice to be provided with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs of the plan or retirement saver, "*without regard to the financial or other interests of the fiduciary, any affiliate, or other party* [emphasis added]."

This language can easily be interpreted to say that a financial advisor who has any interest in getting paid for his or her services, through a sales commission or otherwise, will have automatically violated the best interest

[19] Likewise, it is unclear if the definition of "insurance commission" allows the insurance company to pay 'gross dealer concession' or 'overrides' which are common forms of commission payment within the industry. Gross dealer concession is commission paid to the adviser's broker dealer for sales, education and promotional activities, enrollment, and other services performed by the adviser. The broker dealer uses part of the gross dealer concession to pay the adviser's compensation and part is retained by the broker dealer. Overrides are commissions paid by an insurer to an agent or managing general agent for premium volume produced by other agents in a given geographic territory. We are also concerned that the definition may not cover other common types of compensation to advisers who sell proprietary products, such as benefits, training and sales support. Please see Section VI of this letter for a more detailed discussion of these other types of compensation. We urge the Department to make clear that all of these types of compensation are allowed to ensure the usefulness of this exemption.

standard. This makes no sense. Financial advisors provide valuable services to their clients and deserve to be paid for their efforts. ERISA sensibly allows retirement service providers to charge for their services provided their fees are reasonable. As long as the advisor's fees are reasonable and clearly disclosed to the consumer, the advisor should be allowed to have an interest in getting paid for his or her services.

In addition, if the Department truly intends for the prohibited transaction exemptions to be conditioned on an absolute disregard for any business interest of the financial advisor, its affiliates and other parties, the Department will have created a fiduciary standard of care that does not exist today. As noted in the preamble to the BICE, courts have consistently held that a fiduciary must put the best interests of its clients first. This standard does not mean that the fiduciary cannot benefit from a transaction. It simply means the fiduciary must do what is in the best interest of the client, even if that means the fiduciary will receive less compensation.

We do not believe the Department intends to harm retirement savers by taking away their access to lifetime income guarantees, or to expand the fiduciary standard of care beyond the limits of current law. Rather, the Department has consistently described the best interest standard of care as requiring "retirement investment advisers to put their clients' best interest first."[20] Similarly, Secretary Perez recently testified before Congress that "retirement advisers should put the best interests of their clients above their own financial interests."[21]

Putting the best interest of retirement savers first is very different than requiring a financial advisor to completely disregard any business interest he or she may have in providing investment advice. To align the Department's definition of best interest with current legal requirements and the Department's own statements, we urge the Department to replace the phrase "without regard to the financial or other interests of the fiduciary, any affiliate, or other party" in PTE 84-24 with "by placing the interest of the plan or IRA before the interests of the fiduciary, any affiliate or other party." For the proposed BICE, the current phrase should be replaced with, "by placing the interest of the Retirement Investor before the interests of the Adviser, Financial Institution, Related Entity, or any Affiliate, Related Entity, or other party."

V. The BICE Should Not Harm Insurance Products

Lincoln believes that the BICE is unworkable as currently written and needs to be changed significantly to have any utility in the retirement market. Lincoln Financial Group's retail distribution affiliates, operating under the marketing name of Lincoln Financial Network (LFN) have separately submitted a comment letter detailing these concerns. In this letter, we highlight our specific concerns with the ways in which the BICE would handicap insurance products and discourage financial advisors and selling firms from recommending them. Consumers should have access to the right products, at the right price, with a complete understanding of the costs. That is all that should matter and all that the Department's rules should seek to achieve. As currently written, the Proposal in general, and the BICE in particular, fails to achieve this because it is so burdensome and unworkable that financial advisors and firms will not be able to use it. And it harms insurance products in particular by discouraging commission-based compensation. This bias only serves to reduce consumers' access to retirement products and services, particularly when the right product for a consumer is an insurance product.

We are particularly concerned about the BICE's requirement that firms contractually promise not to "use quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation or other actions to the extent they would tend to encourage individual advisers to make recommendations that are not in the Best Interest of the Retirement Investor." Insurance product sales commissions are generally higher

[20] DOL Conflict of Interest Rule Fact Sheet; DOL Conflict of Interest Rule FAQs: Protecting Retirement Savings

[21] Secretary Perez's Testimony before the Health, Employment, Labor and Pensions Subcommittee Committee on Education and the Workforce, United States House of Representatives (June 17, 2015)

than mutual fund sales commissions. This difference is justified by a number of factors, including the extensive and personalized consumer education and service mentioned before that must be provided by the financial advisor. The BICE does say that firms can pay differential compensation based on different products, but it implies that the selling firm must precisely justify this differential based on "neutral factors such as time and analysis necessary to provide prudent advice." Selling firms are not in a position to justify these differentials because insurance commissions are set by the insurance company, not the selling firm (the same is true for mutual funds). We are concerned that firms who want to comply with the BICE will decide that they are unable to offer insurance products alongside mutual funds on their platforms for retirement savers because of the risk that the higher commissions paid for these products would be found, in the hindsight context of litigation, to have "tended to encourage" recommendations that are not in a retirement saver's best interest—simply because they are higher relative to other investment products.

The Department has said that the BICE is meant to be flexible and accommodate all manner of products and compensation structures. The BICE will not achieve that goal unless this bias toward product-neutral compensation is eliminated. We therefore urge the Department to tie acceptable compensation to customary market rates set by product manufacturers and remove the "tend to encourage" language referenced above. If not removed, this language would allow a disgruntled investor to challenge an investment recommendation based solely on compensation differentials among products. Investors should be required to prove that the recommendation actually was contrary to their best interest based on the totality of relevant factors, not just advisor compensation.

We are also concerned that the BICE will not accommodate common practices in connection with the sale of proprietary products through broker-dealers that are affiliated with an insurance company. Our concern is based primarily on the required contractual promise quoted above, which appears to ban affiliated firms from offering any incentive for financial advisors to sell proprietary products. Like many other industries, such incentives are common in the insurance industry. For example, many insurance companies sponsor benefit plans for financial advisors who qualify for coverage based on their sales of proprietary products, or cover office rents, training and sales support expenses based on such sales. The reason for these incentives is that a significant purpose of an affiliated firm, even one that is "open architecture" (*i.e.*, sells products by other manufacturers alongside proprietary products), is to sell the affiliated insurance company's products. In this context, incentives to encourage those sales make sense and if they are not allowed, insurance companies will need to reconsider whether to continue selling through affiliated firms. Since we know that the Department intends for the BICE to permit the continuation of common business models that may include inherent conflicts of interest, including proprietary product sales generally, we do not believe that this result is intended. We are also concerned that this result would further reduce access to the critical insured retirement products discussed earlier in this letter. We therefore urge the Department to remove this warranty requirement and simply require disclosure of these types of incentives along with all other types of compensation received by the financial advisor.

Again, all that should matter is that consumers have access to the right products, at the right price, with a complete understanding of the costs. We urge the Department to make the changes we propose to achieve that goal.

VI. The Transition Period Should Be At Least 36 Months and Application Should be Prospective

In recent remarks, the Secretary of Labor Thomas Perez stated that "completing this rule is one of the single most important things we can accomplish in the remaining . . . days [of the Obama Administration]."[22] The Proposal is

[22] Patrick Temple-West, *Perez Says Technology Companies Support Labor Department's Proposed Fiduciary Rule*, (June 23, 2015), *available at* <https://www.politicopro.com/financialservices/whiteboard/?wbid=56096>.

enormous and arguably the most significant in the history of ERISA. Even if the Department makes substantial modifications to ensure the Proposal is workable, compliance will be a monumental undertaking and cannot be accomplished in the remaining months of the Obama Administration, as Secretary Perez suggests.

For example, in the United Kingdom, the Financial Services Authority (FSA),[23] the regulator of all financial services in the UK, began a conceptually similar regulatory change in 2006. The Retail Distribution Review (RDR) made it clear that "it is not, and should not be, the job of a regulator to dictate business models or market solutions."[24] Rather, the FSA engaged stakeholders from across the industry (banks, insurers, financial advisors, etc.), senior FSA staff and consumers to influence the RDR rulemaking process. The FSA published a "Discussion Paper" titled *A Review of Retail Distribution* to shape the dialogue and encourage collaboration among stakeholders. The FSA then set timetables for feedback and, at the end of this initial consultation phase, published an *Interim Report* in April 2008 outlining challenges within the regulatory landscape.

In November 2008, the FSA published its comprehensive *Feedback Statement*, outlining the high level changes that the FSA would implement as well as the impact to the capital markets. The FSA continued to consult with stakeholders on all details of the new requirements and then released a *Consultation Paper* in June 2009 describing the proposed changes and draft rules. In March 2010 and then in January 2011, the FSA issued its *Policy Statements* containing final policy and rules. The new policy and rules went into effect in January 2013, **six-and-a-half years** after collaboration with the industry and other stakeholders began.

Importantly, when the FSA released the proposed changes and draft rules, it did not, like the Department's Proposal, contain in excess of ninety-nine (99) questions with multiple sub-parts that must be answered and incorporated into a final rule, all in a matter of months. Instead, the FSA collaborated with stakeholders across the industry over multiple years to address questions and issues during the process and then released reports, statements and other consultation papers throughout the rule-making process. Even with this level of collaboration, the FSA permitted an implementation period of almost three (3) years (from March 2010 to January 2013). We respectfully request that the Department, who has relied heavily on the FSA process to validate the need for this rule-making, follow the lead of the UK and allow for an implementation period of at least thirty-six (36) months.

We also urge the Department to make application of the final regulation, including changes to prohibited transaction exemptions (particularly PTE 84-24) prospective only, meaning that it would only apply to advice with respect to retirement accounts opened or insurance contracts issued after the regulation's compliance date. Prospective application would allow for ongoing advice, including hold recommendations, for existing accounts. This is particularly important for existing commission-based annuity contracts, where retirement investors may have already paid for investment advice. Transitioning to fee-based arrangements (if the Proposal is applied retroactively) would likely be more expensive for consumers than maintaining the existing commission-based structure. If financial advisors are compelled to change their arrangements with existing contract holders from commission-based to fee-based, this could cause significant disruption and additional costs to the modest accounts of middle income retirement savers, including possible surrender charges. Also, variable annuity IRA contracts sold in reliance on PTE 84-24 would suddenly have no protection, and the Proposal does not appear to contain any recourse for advisors and consumers who have relied on this exemption in good faith. We are concerned that without grandfathering, these contracts would have to be surrendered to avoid prohibited transactions under the new rules.

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[23] The Financial Services Authority is now known as the Financial Conduct Authority (FCA).

[24] FSA Managing Director (Retail Markets), Clive Briault, Remarks at *FSA Cazalet Consulting Conference* (November 2, 2006) *available at* FINRA Chief Executive Officer, Richard G. Ketchum, Remarks from the *2015 FINRA Annual Conference* (May 27, 2015) *available at* <http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2006/1102_cb.shtml>.

In addition, if the Proposal is applied retroactively, retirement savers, particularly middle income savers, may no longer receive any advice if firms and financial advisors are unwilling to assume ERISA fiduciary status or cannot comply with the BICE or other provisions of the Proposal. We believe this latter outcome is particularly likely if the transition period is so short that firms and financial advisors do not have the time to make the changes necessary to comply. Middle class retirement savers cannot afford this outcome and the Department should agree that it is not in their best interest.

VII. Proposal Must Not Prevent Critical Product Manufacturer and Retirement Plan Recordkeeping Services

As a product manufacturer and retirement plan record keeper, Lincoln provides a number of services to employers and individual retirement savers that are critical to retirement security. These services include:

- Routine customer service functions such as responding to customer inquiries and explaining product and service attributes.
- Providing participant enrollment and education services, and distribution services to prevent leakage from the retirement system.
- Marketing and sale of group variable annuities and other investment platforms to plans and IRA owners.
- Selling, including wholesaling, to independent fiduciary advisors.

As written, the Proposal unnecessarily defines many of these services as fiduciary functions, forcing product manufacturers and record-keepers to either become fiduciaries or stop providing these critical services. This outcome will decrease employers' and individual retirement savers' access to services that they expect and deserve and that they vitally need to ensure their own and their employees' retirement security.

Conclusion

As recently as 2011, this Administration affirmed its commitment to ensuring that Federal regulations are less burdensome and intrusive and do not restrict consumer choice.[25] As we have explained, the Proposal as currently written is immensely burdensome, extremely intrusive and would dramatically limit retirement consumers' choices in the financial products and services available to them, as well as how they pay for them. We urge the Department to change the Proposal so that it is consistent with the Administration's commitment to reasonable regulation.

[25] Op-Ed, President Barak Obama, *Toward a 21st Century Regulatory System*, Wall Street Journal (Jan. 18, 2011). The President's Op-Ed coincided with his issuance of Executive Order 13,563, which set strict standards for cost-benefit analysis in federal agency rulemaking.

Thank you for the opportunity to comment on this important initiative. We would welcome the opportunity to meet with the Department to discuss our comments in further detail.

Sincerely,

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