Submitted Electronically April 17, 2017

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

Re: RIN 1210-AB79; Proposed Delay and Reconsideration of DOL Regulation Redefining the Term "Fiduciary"

The Principal Financial Group® (Principal) appreciates the opportunity to provide comments regarding the Department of Labor's ("Department") proposed delay and reconsideration of its regulation under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Internal Revenue Code of 1986, as amended ("Code") that will redefine the term "fiduciary" under section 3(21) of ERISA and section 4975(e) of the Code (the "Rule").

Our comments are based on more than 70 years in the retirement industry providing recordkeeping, investment, education and administrative services to small and medium-sized employers and their employees. We currently provide retirement services to more than 43,000 retirement plans and 4.2 million employee participants, including more than 29,000 retirement plans of small businesses[1] and their 620,000 employee participants.

We have over 880 employees and over 1,500 affiliated financial professionals, located across the country, who work directly with small plan sponsors, retirement plan participants, retail investors and financial professionals every day answering questions, conducting enrollment and education meetings, and providing one-on-one financial education to participants at their worksite or over the phone. Our call centers alone receive more than 2.5 million calls each year from retirement plan participants seeking information and assistance.

Our objective is simple – to help American savers better position themselves to meet their retirement income goals. We do this by encouraging participation in their employer's retirement plan, helping them to establish adequate salary deferral amounts and retirement income goal targets, providing education on the importance of investment risk, diversification and time horizons and how to apply those concepts using their retirement plan's investments and IRA vehicles, and encouraging them to preserve retirement savings at key life and career events.

[1] Retirement plans of small business defined as those with less than 100 participants.

We support and accept the need for a best interest standard that is harmonized with other federal agencies and self-regulatory organizations and provides effective protections while preserving access to crucial financial education and assistance for small employers and American savers. Equally as important, any new best interest standard must allow American savers freedom to choose both their financial advisor of preference and the method of payment for those financial services and products.

Pursuant to the President's Memorandum, the Department is directed to prepare an updated economic and legal analysis concerning the likely impact the Rule will have on the following: adverse impacts on investors' access to retirement savings offerings, retirement product structures, retirement savings information or related financial advice; resulting dislocations or disruptions within the retirement services industry that adversely affect investors or retirees; and increases in costs and litigation.

We believe that the Rule, as currently stated, will have significant, adverse impacts on all three general areas identified in the President's memorandum. The Department's initial economic analysis did not appear to contemplate the level of disruption that is already evident in the market and will only be magnified as the Rule becomes applicable.

Our comments are directed at the three general areas of review outlined in the President's memorandum.

(1) Adverse impacts on investors' access to retirement savings offerings, retirement product structures, retirement savings information or related financial advice

Small Business Plan Sponsors.

Just within our own block of retirement plan clients, there are a sizeable number of plans that either have no financial advisor or currently work with a non-securities-registered financial professional with no direct path to operate as a fiduciary using the Best Interest Contract (BIC) Exemption. The level of non-fiduciary support traditionally provided to these clients to assist in their fiduciary decisions will be scaled back significantly for that support to remain as a non-fiduciary activity under the Rule. This is due in large part to the loss of confidence in having clear, bright lines of delineation between what is fiduciary advice and what is not due to the subjectivity and broad nature of the Rule's definition of investment advice.

Organizations and individuals, across the industry, who have traditionally been a source of help for both plan sponsors and participants, will curtail these interactions to avoid inadvertently becoming a fiduciary. And this traditional assistance is much broader than just investment selection. For example, enrolled actuaries working with defined benefit retirement plans often discuss concepts such as gain and loss while considering funding obligations. Although these activities do not include a call to action around specific investment options the fact that these discussions could be perceived to be related to investment options and hence a recommendation may curtain this necessary service. Even a suggestion that a client consider a reasonably-priced fiduciary investment advisor impacts service providers, financial institutions and advisors. We are very concerned that many such clients, without assistance, will become more frustrated with such complex rules and simply discontinue their retirement plans.

Plan Participants and IRA Owners. There are numerous points in time when employees who are eligible to participate in employer-sponsored retirement plans have key decision points about retirement savings. Limiting education and information to these investors will have a negative effect on these decisions. For example, for many employees, their first experience with a retirement plan may include access to a financial professional or education specialist via an enrollment meeting or the ability to call in to a customer service center for information or education needed to make decisions around enrollment and how much to save. With just our call centers alone, we fielded nearly 2.6 million calls last year from plan participants and IRA account holders, providing education and answering questions to assist these investors with their savings decisions.

Whether the employee is a first-time enrollee or has been saving for many years, the discussions that our approximately 880 customer service employees and more than 1,500 financial professionals have with plan participants and retail investors can and often do include: providing definitions of general financial and investment concepts, such as risk and return and dollar cost averaging; compounded return; tax-deferred savings; investment restrictions; fees or other charges. While the Rule's education carve-out supports these "general" concepts, in reality many individuals invariably seek to apply these concepts to specific investments made available in their employer's retirement plan or in the marketplace.

The importance of individuals' ability to access this level of support and assistance is especially important in times of significant market volatility. When the stock market has major, negative adjustments, investors want to talk with someone. That could be the financial professional they have worked with for years, or it may be call centers of their plan's service provider or IRA provider. Not unexpectedly, call volumes in our call center peak during periods of market volatility. For example, in our September 2015 comment letter, we highlighted the 20% spike in the volume of participant calls to our call center over several weeks of severe market volatility in August through September of that year. Our experience has shown that during these periods, while some investors simply want education regarding what is going on in the market, many seek to "get out of the market."

While each situation is different, our financial professionals and customer service representatives seek to remind the investor about saving for the long-term and to discuss goals and the best way to meet those goals. Ultimately, we seek to help the investor set aside the emotion of the moment and to consider all factors in order to make an educated decision. This often includes a review of long-term objectives, diversification and references to the individual's asset allocation, necessitating discussion of the individual investments in that asset allocation. Such conversations, under the broad definition of what constitutes an investment recommendation under the new Rule, could be considered fiduciary advice. As a result, we will be forced to curtail what our customer service representatives discuss with the investor to ensure the investor does not perceive that we have suggested they engage in or refrain from taking a particular course of action.

Furthermore, as savers change jobs, they have to decide what to do with their retirement accounts: leave the money they have accumulated in the former employer's plan, roll it to a new plan under their new employer (if available), roll it into an IRA or take a taxable distribution. Understanding the tax implications and long-term impacts of each choice can make a difference in whether they are able to retire comfortably. Today, too many employees simply cash out because they don't understand the long-term implications and end up spending their retirement savings. Education provided by a customer service center or a financial professional can assist these employees in making informed, prudent decisions.

Based on our reading of the Rule and as noted above, these types of conversations could cause someone to conclude that a suggestion or recommendation was being made with respect to engaging in or refraining from a particular course of action. This will ultimately result in service providers curtailing education discussions in an attempt to ensure the individual does not perceive that a recommendation was made. We fear this will result in investors becoming frustrated and ultimately making bad decisions, whether that relates to their asset allocations or their choice to spend their retirement savings.

(2) Resulting dislocations or disruptions within the retirement services industry that adversely affect investors or retirees

As broker/dealers seek to avoid the new litigation risks of operating under the BIC Exemption, as outlined in the final Rule, we are seeing a dramatic shift in business models to, and investment products developed in support of, fee-based advisory services for retail investors. There are two key concerns with this resulting trend:

- Fee-based accounts may ultimately be a higher cost solution for some investors, particularly those who tend to "buy and hold."[2]
- New surveys and studies suggest minimum account thresholds will increase substantially to work with a financial advisor, creating an advice gap similar to what was experienced in the United Kingdom following implementation of a new regulation banning commissioned models in retirement accounts.[3] Some broker/dealers have already begun forcing smaller investors from their previous advisor relationship to robo-advice or self-directed accounts, well in advance of the Rule's applicability.[4] As financial institutions finally get clarity on a firm applicability date, this trend will accelerate.

[2] Pricemetrix, Insights (August 2012), http://www.pricemetrix.com/cms/wp-content/uploads/PriceMetrix-Insights_Transitioning-To-Fee_English.pdf .

[3] Report: *Fiduciary Rule to Leave US Mass-Market Investors Stranded, Study Shows*, CoreData Research UK (November 2016).

[4] Comment Letter from Investment Company Institute re: Proposed 60-day delay of Fiduciary Rulemaking Applicability Date (March 17, 2017).

- The extensive requirements of the BIC Exemption will also prove excessively burdensome for many smaller broker/dealers and independent broker/dealers who have traditionally served smaller investors. As firms make the decision to exit the business or merge into larger broker/dealers, smaller investors will increasingly and disproportionately have less access to advisors. Simply using the overly conservative bar of $5,000 as a potential advice cut-off for IRA accounts, more than 13 million IRA investors would be impacted.[5]

Similarly, broker/dealers are instituting major changes across their retirement plan business, ranging from complete shifts from commissioned- to fee-based models, narrowing of recordkeepers available to their clients, incorporation of new advisory services and resulting requirements, and changes to compensation. These changes result in major disruption for retirement plan sponsors and significant administrative coordination is needed to accomplish the changes. Because many broker/dealers put business model change activities on temporary hold when it became unclear whether the applicability date would stand or be delayed, only a fraction of this disruption has been experienced.

An example of the unintended consequences of the Rule can be seen in the already significant levels of retirement plan sponsors choosing to disavow their advisors – not because of the value that the advisor has provided but because of objections to newly required elements they must agree to for access to a fiduciary service, as outlined and required by the advisors' financial institutions. Some providers are experiencing double-digit disavowal rates.

This concern of newly "orphaned" retirement plan sponsors is magnified with those who are served by the sizeable ranks of financial professionals who support existing retirement plans of small employers. The majority of financial professionals serving small plan sponsors are considered "generalists," or those who derive a minority of their practice revenue from employer-sponsored retirement plans. While retirement plans may be a minority of these generalist advisors' practices, they serve their clients well. However, as many of these advisors' financial institutions, especially those with limited qualified retirement plan books of business, evaluate their risks and liabilities under the Rule, we anticipate there will be significant abandonment of accounts and consolidation of practices.

We are equally concerned about new plan formation among small employers. The majority of financial professionals who support small plan clients (those with less than $5 million in assets) that Principal recordkeeps are "generalists" as defined earlier. The majority of these financial professionals' relationships with their business owner clients began from a risk-, individual wealth- and practice-management perspective and ultimately led to encouragement to start a qualified retirement plan for their employees. We believe the Rule will drive many of these financial professionals to avoid work on qualified plans due to the inherent risks posed by the

[5] The Investment Company Institute, IRA Database (2014).

Rule and the BIC Exemption, creating a vacuum that will harm new plan formation among small employers.

We further believe there will be a lack of willing fiduciary advisors to fill this gap. According to data from Cerulli[6], only 5.1% of all financial professionals are considered retirement "specialists," or those who derive 50% or more of their practice revenue from retirement plan business. The vast majority of financial professionals are considered "generalists" – those who derive 15% or less of their practice revenue from retirement plan business. According to a study by Cogent[7], two-thirds (65%) of Emerging DC advisors' (defined as those whose book of retirement plan clients is $10 million or less in assets) books of business are comprised of mini-Micro plans with less than $1 million in plan assets. Given Principal's traditional focus on small-to-medium size employers, our experience is consistent with these studies.

(3) Increases in costs and litigation

The Department's estimates regarding the time that will be needed by the industry to implement the changes associated with the Rule illustrates a significant disconnect regarding the level of cost and disruption that has been and will continue to be created. To prepare for full compliance with the Rule, we have undertaken an enterprise-wide, multi-pronged project effort. Due to the limited timeframe allotted by the Department to comply, this project effort will deliver critical deliverables to meet baseline compliance by the June 9, 2017, and January 1, 2018, compliance dates while continuing to work on major deliverables to improve automation, efficiencies and customer experience throughout the remainder of 2017 and into 2018. Importantly, significant resources are being tasked now to develop requirements to support the BIC Exemption website, which requires a level of disclosure to retirement investors that significantly exceeds those established by other ERISA regulations, which were developed over numerous years in an effort to provide clear and meaningful disclosure. Such incredible depth of disclosure is not without cost, especially for the granular detail that few will read in any depth, and perhaps fewer will understand. A key element of this project focus is determining how much of the required data elements even exist in a usable format today.

The Department's estimates also do not reflect the massive number of plan changes that will be triggered across the industry as broker/dealers evolve their business models in order to comply and manage risk. While the majority of broker/dealers with retirement clients recordkept by Principal have delayed business model decisions and activities, a handful of broker/dealers have already instituted wholesale changes, primarily moving from commissioned arrangements to fee-based arrangements but also instituting a host of additional, new service requirements. In all, more than 3,800 plans recordkept by Principal have had major changes implemented in response to the Rule. This required a significant, dedicated effort in our service and communication areas to execute the changes, yet represents only 10% of our total block of clients.

[6] The Cerulli Report, Defined Contribution Distribution 2015
[7] Cogent Wealth Reports, Retirement Plan Advisor Trends 2015

This effort entailed developing client lists, drafting client communications, preparing new agreements, coordinating mailings, undertaking follow-ups phone calls to unresponsive clients, collecting signed agreements, facilitating fee changes and providing required participant notice mailings. Our service personnel also conducted thousands of phone calls with clients and advisors related to these changes.

It is important to note that for our in-force retirement plan clients with advisors compensated via commissions, 97% of these plans have a level commission arrangement – that is, the advisor is paid the same commission amount regardless of the investments selected by the plan. Plan fiduciaries sign off on the commission arrangements and receive transparent disclosures regarding the commission payments, as required under 408(b)(2) regulations. The vast majority of the 3,800 plans noted above changed the form of compensation, moving from commissions to fees, due to the firms' aversion to operating under the onerous provisions of the BIC Exemption. As the applicability date of the Rule becomes clear, this activity will begin again in earnest, not only with Principal clients but across the industry.

Because so few broker/dealers have implemented business model changes in anticipation of an applicable Rule, the vast majority of the disruption to plans, participants and individual investors has yet to be experienced. This needless disruption could be avoided by seeking a more workable BIC Exemption that will be embraced by broker/dealers.

The BIC Exemption will also increase litigation activity by effectively outsourcing enforcement of the prohibited transaction rules for IRA accounts to the plaintiff's bar, generally heightening the litigation risk for service providers. As a result, the Rule will result in litigation under numerous jurisdictions with various interpretations of the federal regulation. Changes in jurisdictions will have to be monitored, as will shifting rules as, for example, a Circuit Court overrules a District Court, and each different interpretation in each different jurisdiction will increase the compliance monitoring requirements. This would also undermine the Congressional goal of uniformity. It has long been observed by the Courts that ERISA is a "comprehensive and reticulated statue,"[8] the product of a decade of Congressional study of the Nation's private employee benefit system. In creating the prohibited transaction rules so many years ago, Congress recognized the cost in time and assets of excessive litigation and the effective outsourcing of enforcement brings us back to that. It also introduces additional compliance costs to the system that do not exist today. Particularly, establishment and maintenance of the disclosure website will be a significant burden for any firms operating seeking to operate under the BIC Exemption. This requirement seems to have little real value or purpose other than to allow plaintiff's bar to search out and identify class action targets.

Consequentially, we would expect those costs to be absorbed into the industry over time, and ultimately passed on to and paid for by retirement investors. There has been little or no evidence submitted that would bolster the Department's argument that this Rule will

[8] Mertens vs. Hewitt Associates, 508 U.S. 248 (1993)

significantly increase legal protections or favorable outcomes for plans, their participants or retirement investors such that the expense and confusion created by the Rule would be justified.

Conclusion

Principal appreciates the opportunity to provide comments and observations on the effect of the Rule. Ultimately, we share the Department's objectives of improving retirement savings, establishing a consistent best interest standard, and better positioning Americans to meet their retirement needs. We are concerned, however, that these objectives will be more difficult to realize under the Rule.

From our many years of experience in the retirement and financial services industry, we believe that the Rule, as written, includes provisions that will be difficult to implement and will result in unintended consequences that will likely undermine the Department's objectives. As more fully detailed in this letter, we echo the numerous comments that believe the Rule and the BIC Exemption will negatively affect the system by which plans, participants and IRA owners receive information from financial professionals, financial services institutions, and others, and would place unnecessary burdens and restrictions on the individuals and firms who could be deemed to be "fiduciaries" under the Rule's definition of "investment advice."

Accordingly, we strongly encourage the Department to consider a modified approach that facilitates an environment that promotes savings and retirement income as a primary objectives. We offer the following as a roadmap of modifications that can benefit consumers and the financial industry's efforts to meet their needs.

Definition of Investment Advice

1. Provide a more workable bright line definition of what activities constitute ERISA "investment advice" that does not leave consumers or financial professionals wondering if an interaction is an ERISA fiduciary act. Codify previous FAQ guidance and issue new FAQ's focused on clarifying types of conversations that are not investment advice.

Exemptive Relief Modifications

2. Preserve PTE 84-24 for indexed and variable retail annuity products, and for group variable annuity products and the current prohibited transaction exemptions for mutual fund products used by retirement plan clients either permanently or for an extended transition period. Specifically for insurance-licensed brokers using PTE 84-24, transition relief will allow them needed time to align with a Financial Institution willing to enter into the BIC Exemption on their behalf, which may require the broker to obtain a securities license, and to limit significant disruption for retirement plan sponsors that will occur effective January 1, 2018, with no delay. Preserving current PTEs, or providing transitionary relief, will help avoid retirement plan clients being "orphaned" because their financial professional, who may be insurance-only licensed, no longer has a prohibited transaction exemption under which to operate.

3. The current requirement that any differences in compensation among recommended products must be based solely on neutral factors will result in financial professionals being forced to not recommend specific products that ultimately would be in the best interest of their clients. DOL

should allow small or negligible differences in compensation within product categories that is not based on the requirement that such variances be based on neutral factors to allow financial professionals to consider appropriate products that may otherwise have some level of compensation variance.

4. Maintain the BIC Exemption as a prohibited transaction exemption but with modifications to make it more workable. Changes could include but are not limited to the following:

    a. Eliminate the bilateral contract requirement in the retail space under the BIC Exemption. Instead of relying on inconsistent application under state contract law for enforcement, maintain enforcement jurisdiction for IRAs with the appropriate regulators (i.e., IRS, FINRA or the SEC). This will provide consistent interpretation and enforcement of the BIC Exemption and will be a more cost-effective and practical way for consumers to raise complaints. This consistent approach will provide consumers with a regulatory body to go to for lodging complaints and seeking restitution while avoiding the discrepancies that would naturally emerge when dealing with thousands of diverse state court jurisdictions. We believe this modification can also help reverse the trend we are seeing of firms and their advisors moving away from small account clients or limiting the manner in which they are willing to work with these types of clients.

    b. Eliminate the BIC Exemption public website disclosure requirement. The information required to be publically-listed is already available in some shape or form for clients. Duplication of this information in a public website setting, which traditionally is not where consumers go for this type of information, unnecessarily increases costs, ultimately for the end consumer. Maintain the provision that consumers can still request additional information.

    c. Allow reasonable requirements within the BIC Exemption for rollovers from retirement plans. We are hearing frequently from advisors they question the future of doing retirement plan business because they will no longer be able to help their clients with rollovers due to the liability resulting from such broad requirements. For instance, if they have requested prior retirement plan fee and service information from the participant, but have not received it, allow documentation of the effort and proceed with a best interest recommendation based on the information that has been provided.

    d. Expand and clarify the so-called grandfathering provisions, including not requiring a BIC Exemption contract for IRAs established prior to the applicability date.

    e. Significantly alter or eliminate BIC Exemption preamble wording that describes how financial institutions and advisors should develop special processes and procedures regarding recommendations involving certain investments, such as hard-to-value, illiquid, complex or particularly risky assets. This wording has direct implications on an advisor's ability to recommend quality investment options based on their clients' circumstances.

    f. Eliminate the requirement for establishment of a "BIC Officer."

Education Exception Modifications

5. Preserve the ability for service providers and financial professionals to discuss with plan sponsors and individual plan participants non-investment specific recommendations around topics such as promoting adequate savings rate deferrals, auto-escalation plan design, Qualified Default Investment Alternative plan provisions, etc. The unintended consequence that such information may be viewed as an investment recommendation severely hampers the ability to help plan sponsors and their participants achieve retirement readiness.

Platform Exception Modifications

6. Allow for a service provider to embed an unaffiliated, third-party investment advisory service in a product platform without the service provider being deemed as making an investment recommendation and a fiduciary for such. This type of product platform provides a streamlined, cost-effective product option for small retirement plan sponsors who are looking for an economical way to receive investment advisory services to help meet their fiduciary obligations.

7. Expand the platform exception to apply to defined benefit plans.

Sincerely,

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