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Electronically: EBSA.FiduciaryRuleExamination@dol.gov
The Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
Room N-5655
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: RIN 1210-AB79

To Whom It May Concern:

Lincoln Financial Network ("LFN"), the marketing name for Lincoln Financial Group's[1] two dually-registered broker-dealer/investment adviser entities: Lincoln Financial Advisors Corp. and Lincoln Financial Securities Corp., 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").

LFN strongly supports a delay because twelve months was never enough time to make all the changes required to be in compliance without adversely impacting consumers. In addition, as written, the Fiduciary Rule favors fee-based compensation, even in situations where commissions are more likely to be in a consumer's best interest. Because of this bias, the rule already has or is likely to have all of the following harmful impacts:

- **Limited investment product options for retirement accounts.** The requirements to level commissions for similar products means that consumers now have extremely limited investment options in their commissionable retirement accounts, as the mutual fund industry has had insufficient time to develop products that meet the requirements of the rule. Today, over 300 mutual fund families are available for LFN's retirement investors and less than ten will be available when the rule is applicable, unless more time is provided to the mutual fund industry. On the other hand, consumers will have significantly more options for non-retirement accounts.

[1] Lincoln Financial Group is the marketing name for Lincoln National Corporation (LNC) and its affiliated companies. LFN is an affiliate of LNC, whose other affiliated companies act as issuers of insurance, annuities, retirement plans and individual account products and services. The affiliates include, but are not limited to, The Lincoln National Life Insurance Company (LNL); Lincoln Life and Annuity Company of New York (LLANY) and Lincoln Financial Distributors, Inc. (LFD), Lincoln's wholesaling arm, a broker-dealer registered with the SEC and a member of FINRA.

- **Limiting access to needed guaranteed retirement income.** Over the 12-month period ending on December 31, 2016, LFN's sales of qualified variable annuities with guarantees declined 33%. The Fiduciary Rule has created the impression that commissioned products like annuities, which have higher costs because of the guarantees, are fundamentally not in the best interest of retirement investors. This misimpression is causing advisors to avoid offering the very products and solutions that retirement investors need – guaranteed income. Annuity manufacturers need additional time to ensure guaranteed lifetime income products are available and accessible on fee-based platforms.

- **Accelerating shift to fee-based compensation.** Fee-based compensation for advice is not always in the best interest of consumers. Nonetheless, the Fiduciary Rule has produced a conscious bias that commissioned products are not in a client's best interest, leading some prominent firms to eliminate commissions entirely and other firms to limit the use of commission accounts. Interestingly, these firms are eliminating or limiting the use of commissionable accounts only for retirement accounts, which exacerbates customer confusion. This industry shift to fee-based accounts is occurring, even when commissions would be the best option for a consumer.[2] As of 2016, approximately two-thirds of advisers' total revenues were derived from fees, with this number expected to increase to over three-quarters by 2018. By comparison, commission-based revenues are expected to decline almost thirty percent (30%) from 2016 to 2018.[3]

- **Limited availability of advice for small investors**. Many LFN advisors have indicated their intent to shed smaller balanced accounts because they can no longer service those accounts with a narrower commissionable product universe. In addition, these accounts are too small to be charged an annual fee, thus creating an advice gap for smaller retirement investors.

A Delay is Necessary for Industry Readiness

LFN is fully committed to compliance and has expended significant resources to prepare for the April 10, 2017 implementation date. Since April 2016, LFN has dedicated over 80 personnel to overhauling LFN's business model and systems, including its retirement platform, products, service models and technology offerings, and earmarked millions of dollars in capital and resources to comply with the Fiduciary Rule. However, the timeline imposed by the Department was unrealistic, as products and platforms are not yet ready. This lack of readiness has and will continue to harm retirement investors. Two product categories are illustrative:

- **Mutual Funds.** Mutual fund product manufacturers have yet to develop and make available mutual funds that offer consistent/level compensation, despite the fact that this is required to comply with the Best Interest Contract ("BIC") Exemption. Many mutual fund manufacturers intend to offer a "T-share class" mutual fund, with breakpoint and compensation structures that are consistent with most other T-share class mutual funds. A number of mutual fund manufacturers filed these new products with the Securities and Exchange Commission ("SEC"). Despite these SEC filings, the products will not be ready by April 10, depriving retirement investors of cost-effective mutual funds.

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[2] Industry trends suggest that advisors will continue to move retirement assets to fee-based accounts. According to Cerulli Associates, almost two-thirds (64%) of advisors plan to increase their fee-based business. In addition, two-thirds (66%) of advisors believe that small investors will have less access to professional financial advice as a result of the rule. The Cerulli Report, *U.S. Broker/Dealer Marketplace 2016*.

[3] The Cerulli Report, *Advisor Metrics 2016*.

Until these products are ready, retirement investors will have extremely limited mutual fund options. LFN intends to offer fewer than ten mutual fund families (out of hundreds currently available to non-retirement investors) because these are the only mutual funds that have consistent/level compensation. Unfortunately, these mutual fund families are not the funds most commonly purchased today by retirement investors.

- **Annuities.** With the shift away from commission-based products, yet the continued need for guaranteed lifetime income, fee-based annuities are vital for retirement investors. However, fee-based annuities, while available, are effectively not accessible in LFN or the marketplace. Currently, there is no easy way for retirement investors to access these important products because the fee-based annuity technology has yet to be installed on fee-based retirement platforms. Annuity manufacturers need additional time to install these important fee-based products on LFN's and other distributors' fee-based platforms.

The rule requirements and conditions are exceedingly complex and require massive and expensive information technology re-design and builds, as well as comprehensive training and communication for advisors and customers. The rushed implementation required by the Department's unreasonable timeline will result in additional cost to retirement investors and negatively impact the customer experience. This rushed timeline is also inconsistent with the Department's past practices for new regulations. The Department provided a two year implementation period for service providers to implement the section 408(b)(2) regulations. By comparison, the industry was given just twelve (12) months to meet this far more challenging and complex rule, which requires universal changes to business models, products, solutions, technology and how investment advice is delivered.

Improvements to the Fiduciary Rule are Critical

Delaying the rule is also necessary to allow the Department to take the time needed to make important changes that will address these actual and potential impacts and ensure that retirement savers continue to have a full-spectrum of investment choices, choices in how they pay for advice (i.e., commissions or fees), and access to critically important retirement solutions, including commissionable products like guaranteed lifetime income products. LFN recommends the following changes:

- **Treat Commissions and Fees the Same.** The BIC Exemption contract requirement needs to be removed. Because the contract requirement only applies to commission-based accounts, it is causing the unnecessary shift for retirement assets away from commission-based brokerage accounts to fee-based advisory accounts. This shift, especially when applied only to retirement assets, continues to confuse consumers about why their retirement and non-retirement accounts are treated differently.

- **Eliminate the Private Right of Action.** The BIC Exemption's contract requirement, which also creates a private right of action, will incite open-ended litigation. Removing the contract requirement should eliminate frivolous litigation and "enforcement" by plaintiffs' attorneys. Rather, enforcement of the best interest standard should be handled through appropriate regulation, not through class action litigation.

- **Harmonize with SEC and FINRA.** The Department <u>needs</u> to collaborate with other regulators and harmonize the "best interest" standard. The lack of harmonization is adversely impacting retirement investors because retirement assets are treated differently than non-retirement assets.

A uniform standard should be applied across the marketplace for all investors, not just retirement investors. While this will not be easy and will require coordinated rulemaking with the SEC and other regulators to ensure a single workable standard of care for the entire industry, it is critical to ensure that retirement investors are not the losers in this process. A harmonized standard will ensure both consumers and financial services professionals can be served by using existing regulatory enforcement mechanisms, such as those available through the states, SEC and FINRA.

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 and LFN's own experience, as highlighted above, show that these impacts are already occurring.

LFN appreciates the opportunity to comment and is willing to assist the Department with any further guidance or modifications necessary to accomplish the overarching goal of ensuring retirement investors receive advice that is in their best interest.

Regards,

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