

August 7, 2017

Raymond J. Manista

Senior Vice President - General Counsel
and Secretary

720 East Wisconsin Avenue
Milwaukee, WI 53202-4797
414 665 2214 office
414 625 2214 fax
raymanista@northwesternmutual.com

Filed By Email: EBSA.FiduciaryRuleExamination@dol.gov

Office of Exemption Determinations
Employee Benefits Security Administration
(Attn: D-11933)
U.S. Department of Labor
200 Constitution Ave. NW, Suite 400
Washington, DC 20210

**Re: Request for Information Regarding Fiduciary Rule and Prohibited Transaction Exemptions
RIN 1210-AB82**

Ladies and Gentlemen:

The Northwestern Mutual Life Insurance Company (“Northwestern Mutual”)¹ appreciates the opportunity to comment further on the Department of Labor’s (the “Department”) Request for Information published July 6, 2017 (the “RFI”) regarding the Best Interest Contract Exemption (the “BIC Exemption”), Principal Transactions Exemption and amendments to PTE 84-24 (collectively, the “Exemptions”) related to defining who is a “fiduciary” under the Employee Retirement Income Security Act of 1974 (collectively with the Exemptions, the “Fiduciary Duty Rule”). Northwestern Mutual previously responded to Question 1 of the RFI by letter to the Department dated July 21, 2017.

Northwestern Mutual has long supported a uniform “best interest” standard of care when providing investment advice across its brokerage and investment advisory businesses (including for retirement account and Plan clients) so long as the standard is business-model neutral, preserves client choice, ensures client access to affordable retirement options, and avoids client confusion in its implementation.

The RFI poses a number questions related to the Fiduciary Duty Rule including: whether the rule allows advisors and their firms to offer a wide range of products that can meet each investor’s particular needs?; what should be changed with respect to the BIC Exemption contract?; should a streamlined exemption be developed based on firm and advisor compliance with updated standards of conduct adopted by the securities regulators?; and would layered disclosure sufficiently meet client needs?

Responses to the RFI will allow the Department to continue to consider questions of law and policy raised by the President’s Memorandum to the Secretary of Labor, dated February 3, 2017 (the

¹ Northwestern Mutual has been helping families and businesses achieve financial security for 160 years. Our financial representatives build relationships with clients through a distinctive planning approach that integrates risk management with wealth accumulation, preservation and distribution. Northwestern Mutual delivers financial security to 4.4 million people who rely on us for insurance and investment solutions, including life, disability income and long-term care insurance; annuities; trust services; mutual funds; and investment advisory products and services. Our financial strength and ability to meet our clients’ needs is demonstrated by \$250 billion in consolidated balance sheet assets, \$28 billion in revenues, \$100 billion in assets under management in investment products and services, and \$1.6 trillion worth of life insurance protection in force. Northwestern Mutual was recognized by FORTUNE magazine as one of the “World’s Most Admired” life insurance companies in 2017.

“Memorandum”). The Memorandum directs the Department to determine whether the Fiduciary Duty Rule may adversely affect the ability of Americans to gain access to retirement information and financial advice. As part of this examination, the Department is required to prepare an updated economic and legal analysis concerning the likely impact of the Fiduciary Duty Rule. If, because of that analysis or otherwise, the Department concludes that the Fiduciary Duty Rule has the adverse impacts mentioned above, it is directed to publish for notice and comment a proposed rule rescinding or revising the Fiduciary Duty Rule, as appropriate and as consistent with law.

Key Principles for Consideration During the Reexamination Period

Considering the questions raised in the RFI and the directive in the Memorandum, we encourage the Department to devote the necessary time to reassess fundamental underpinnings of the Fiduciary Duty Rule. Key areas for reconsideration include the following:²

- ***Further Examination and Leverage of Existing Regulatory Protections and Coordination with Other Regulators.*** We continue to believe that the Fiduciary Duty Rule failed to sufficiently consider the evolving regulatory oversight mechanisms of other authorities, both at the federal and state level. The SEC, FINRA, the Treasury Department, bank regulators, and state insurance regulators have all been very active in the retirement market since ERISA was enacted. There is already a very robust disclosure regime, enforcement mechanisms, required representative training, marketing material requirements, non-cash compensation restrictions, and heightened standards of care, to name just a few aspects of the existing regulatory structure. In response, firms have developed and continually enhance sophisticated compliance and supervisory structures to help ensure their sales forces meet these regulatory expectations. We are heartened to see the recent pledges to coordinate by Secretary Acosta and Chairman Clayton, as well as the latter’s June request for information on the standards of conduct for broker-dealers and investment advisers. The Department should use this time to reengage with the federal securities and other regulators with an objective of achieving greater uniformity both in terms of the fiduciary standard itself, but also in how it is carried out. In other exemptions promulgated by the Department it has been willing to look to the securities, banking or insurance law status of an entity as a key protection under the exemption (e.g., the Qualified Professional Asset Manager Exemption)—we think a similar approach could be used here. Further, we urge the Department to adopt a much more principles-based approach to the fiduciary standard that relies on layered disclosure to ensure retirement investors are informed of material conflicts of interest, fees, compensation, etc.—in our view the Department has been far too unwilling to incorporate existing and proven investor-protection principles into its proposed approach. By adding yet another layer of rules that impact only a segment of the investment advice arena, the prospect of investor and advisor confusion is enhanced, and compliance costs are escalated.
- ***Reassessment of the Department’s Position on Proprietary and Other Limited Ranges of Products.*** Inherent in the Department’s premise in the Fiduciary Duty Rule that retirement investors need greater protections when it comes to proprietary or other limited-range products is that they are somehow bad for consumers. We believe that well-designed proprietary insurance products (such as annuities) combined with a career agency system to distribute

² Additional context and perspective on these points can be found in our letter to the Department dated July 21, 2015, commenting on the proposed version of the Fiduciary Duty Rule.

those products (such as what we have at Northwestern Mutual) offers tremendous benefits and long-term value for retirement clients. Rather than imposing in the BIC Exemption new requirements for these circumstances, we suggest that the Department leverage the SEC's disclosure-based approach for registered investment advisers offering fiduciary advice on proprietary or other limited range of products. There is no reason that the Department's and SEC's approaches could not be harmonized to create a uniform set of standards.

- **Preservation of Guaranteed Lifetime Income Options.** Although the Department has previously recognized the importance of access to lifetime income options after retirement due to the trend away from traditional defined benefit plans,³ the positioning of annuities by the DOL in the Fiduciary Duty Rule appears to have led to a significant decline in sales in 2016.⁴ We continue to believe that annuity products are far more similar to each other than to mutual funds and that the Department has not demonstrated why PTE 84-24, which has been in place for more than 30 years, as enhanced with the impartial conduct standards, would not sufficiently protect the investing public with respect to all annuity sales, including variable annuity sales. Here again, the existing securities law disclosure requirements, combined with PTE 84-24's existing disclosure requirements, would sufficiently protect the retirement investor with respect to variable annuity sales.

If you have any questions regarding our comments or if we can be of any assistance in your consideration of the issues summarized above, please contact the undersigned or John Dunn at 414-665-5443 or [johndunn@northwesternmutual.com](mailto: johndunn@northwesternmutual.com).

Very truly yours,



Raymond J. Manista
Senior Vice President, General Counsel
and Secretary

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³ See, e.g., Department of the Treasury and Department of Labor, [Request for Information on Lifetime Income Options for Participants and Beneficiaries in Retirement Plans](#), 75 Fed. Reg. 5253 (February 2, 2010).

⁴ LIMRA Secure Retirement Institute, U.S. Individual Annuity Sales Survey (Fourth Quarter 2016).