JACKSON®

James R. Sopha
President

1 Corporate Way
Lansing, MI 48951
Phone: 517/702-2513
Fax: 517/702-2445
james.sopha@jackson.com

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

Employee Benefits Security Administration
Office of Exemption Determinations
U.S. Department of Labor (Attention D-11712)
200 Constitution Avenue, NW
Suite 400
Washington, DC 20210

FILED ELECTRONICALLY

Re: Definition of the Term "Fiduciary;" Conflict of Interest Rule (RIN 1210-AB32) (the "Fiduciary Proposal");

Proposed Best Interest Contract Exemption (ZRIN 1210-ZA25) (the "Proposed BIC Exemption"); and

Proposed Amendment to Proposed Partial Revocation of Prohibited Transaction Exemption (PTE) 84-24 (ZRIN 1210-ZA25) (the "84-24 Amendment") (collectively, the "DOL Proposals")

To Whom It May Concern:

Jackson National Life Insurance Company[1] and its affiliates ("Jackson") appreciate the opportunity to comment on the DOL Proposals. Like the Department of Labor ("DOL"), Jackson supports and promotes the welfare of Americans planning for, or in, retirement. We do not, however, support the DOL Proposals. They are bad for investors and for America. If implemented, the DOL Proposals will significantly reduce, or eliminate, access to important retirement planning tools, lifetime income guarantees and death benefits for millions of Americans. Where access remains, it will come at a much higher cost to these Americans.

[1] Jackson National Life Insurance Company is a stock life insurance company organized under the laws of the state of Michigan since 1961.

Jackson is well-positioned to offer informed insight.

More than 1.5 million investors have entrusted Jackson to provide (i) an opportunity to grow their assets, (ii) a guaranteed income stream for the remainder of their lives and, (iii) in some cases, money to sustain their spouses and families after their deaths. Jackson has paid more than $50 billion in annuity payments and other benefits to its contract holders since the financial crisis. Jackson manages more than $163 billion in fixed and variable annuities for investors across our country, including approximately $98 billion in annuities held in accounts that qualify as Section 408 Individual Retirement Annuities ("IRA accounts"). To support its investors and contract holders, Jackson employs more than 4,500 people.

For years, Jackson has been conservatively and responsibly managed to enable it to keep the promises it makes to investors. Jackson has maintained its financial strength ratings for more than 12 years – including during the financial crisis.[2]

We believe that our knowledge of the industry uniquely qualifies us to provide input and comments on the DOL Proposals. Jackson's insurance products are offered by more than 38,000 financial advisors affiliated with more than 625 independent broker-dealers, wirehouses, financial institutions and independent insurance agents. We educate and train these financial professionals about our products and how to customize them to meet the specific retirement needs of the investors they serve. Four retail broker-dealers, and 3,600 financial advisors, are affiliated with Jackson and deal directly with investors seeking advice. These affiliates give Jackson a unique perspective as both a manufacturer and a retail distributor of retirement savings and income products.[3]

Jackson is also a wholly owned subsidiary of Prudential plc, a financial services firm located in the United Kingdom (UK).[4] Prudential has first-hand experience with the adverse consequences of comparable regulation adopted in the UK that eliminated commission payments from product providers to advisers and platforms and resulted in a loss of access to professional investment advice for millions of UK citizens.[5]

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[2] As of July 20, 2015, Jackson had the following ratings:
- A+ (superior) — A.M. Best financial strength rating, the second-highest of 16 rating categories;
- AA (very strong) — Standard & Poor's insurer financial strength rating, the third-highest of 21 rating categories;
- AA (very strong) — Fitch Ratings insurer financial strength rating, the third-highest of 19 rating categories; and
- Aa2 (excellent) — Moody's Investors Service, Inc. insurance financial strength rating, the third-highest of 21 rating categories.

[3] Jackson National Life Distributors LLC ("JNLD") and National Planning Holdings, Inc. ("NPH") are affiliates of Jackson. JNLD serves as the wholesale distributor of Jackson's variable annuity products, and is registered as a broker-dealer with the SEC under the Securities Exchange Act of 1934, and is a member of the Financial Industry Regulatory Authority, Inc. ("FINRA"). NPH is a FINRA member broker-dealer holding company, providing retail distribution of a broad variety of products and services, including IRAs.

[4] Prudential plc (NYSE: PUK) is a company incorporated in England and Wales. Prudential plc is not affiliated in any manner with Prudential Financial, Inc., a company whose principal place of business is in the United States of America.

[5] Deloitte, *"Bridging the Advice Gap: Delivering Investment Products in a Post-RDR World."* A Deloitte Insights Report. (2012) Web. <http://www2.deloitte.com/uk/en/pages/financial-services/articles/delivering-investment-products-in-a-post-rdr-world.html> (the "Deloitte Report on RDR").

Variable annuities are an important tool for retirement investors.

America has a growing retirement gap. The shift away from defined pension plans in the United States means that more and more Americans are depending on their personal savings to sustain them during their retirement years. Research has found the current efforts are inadequate and that over half of American households do not currently have savings sufficient for retirement.[6] It is critical that retirement investors have readily available access to time-tested planning tools, including variable annuities.

American investors, planning for retirement, have complex savings and income needs that require individualized solutions. Variable annuities offer investors a unique retirement product that provides a diversified portfolio of investments that grows on a tax-deferred basis and also provides both guaranteed lifetime income and death benefits. Annuities are the <u>only</u> financial product that provides financial safety and security to retirees in the form of guaranteed lifetime income. Annuities are especially important to, and primarily used by, investors with modest savings. Individuals with annual income under $100,000 purchase the majority of the variable annuities sold within the industry[7] and purchase the annuities primarily to obtain guaranteed monthly income in retirement.[8] As the Executive Office of the President has recognized, annuities are an important tool that Americans can use to mitigate one of (if not <u>the</u>) most important risks they face in retirement: outliving their assets.[9]

Annuities offer unique benefits that allow investors to transfer risk from themselves to an insurance company's balance sheet. This risk transfer involves the insurance company accumulating and combining the risk of all of its investors and then employing sophisticated hedging strategies to mitigate the risk of stock market declines and interest rate movements in providing guarantees to those investors. Such a sophisticated solution is something an individual investor could never execute or afford on his or her own. Variable annuities also provide investors with the ability to diversify their assets among numerous asset classes, including fixed account options with minimum guaranteed returns. Of all annuity types, only variable annuities provide investors with a pass-through of the investment performance of the underlying funds in which the subaccount invests, net of administrative contract and benefit fees,[10] while also providing lifetime income guarantees and death benefits. Therefore, variable annuities are uniquely situated to meet the complex and varied needs of retirement consumers.

The DOL Proposals threaten to separate variable annuities with these unique product solutions, including the lifetime guarantees of variable annuities, from the retirement investors who need the products. By

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[6] Alicia H. Munnell, Wenliang Hou, and Anthony Webb, "NRRI Update Shows Half Still Falling Short" (Chestnut Hill, MA: Center for Retirement Research at Boston College, Dec 2014) <http://crr.bc.edu/wp-content/uploads/2014/12/IB_14-20.pdf>.

[7] "Chapter 8: Consumer Use and Attitudes Toward Annuities" *2015 IRI Factbook: A Guide to Information, Trends, and Data in the Retirement Income Industry.* Washington, D.C.: Insured Retirement Institute. 2015. 95. Print.

[8] Generating guaranteed monthly income is the primary reason nearly half of all households (48%) gave for purchasing an annuity. "Chapter 8: Consumer Use and Attitudes Toward Annuities" *2015 IRI Factbook: A Guide to Information, Trends, and Data in the Retirement Income Industry.* Washington, D.C.: Insured Retirement Institute. 2015. 100. Print.

[9] "Annuities can help to mitigate some of the risk faced by retirees. In particular, annuities protect retirees against the risk of outliving assets." Executive Office of the President, Council of Economic Advisers, *"Supporting Retirement for American Families,"* at 4 (Feb.2, 2012)

[10] In comparison, Fixed Indexed Annuities (or Equity Indexed Annuities) provide potential returns corresponding to the applicable index or indices, but cap the up-side return based upon the applicable participation rate.

making variable annuities inaccessible to, or more expensive for, investors, the DOL is hurting the very investors it is attempting to protect through the DOL Proposals.

Variable Annuities are responsibly manufactured and distributed to retirement investors under the current robust regulatory framework.

Variable annuity issuers and distributors are currently heavily and effectively regulated under broad and complex regulatory structures that have evolved over decades at both the state and federal levels. Variable annuities are subject to substantial financial and market conduct oversight, as well as stringent reserve and suitability requirements, by a variety of regulators, including the Securities and Exchange Commission ("SEC"), FINRA, the DOL, and state insurance regulators.[11]

Regulatory complaint statistics show that the current regulatory framework works well and that annuity owners are overwhelmingly satisfied with the annuities they purchase. State regulators, FINRA and the SEC each provide mechanisms that allow consumers to file complaints directly with the regulators. The statistics generated by the states and FINRA reflect a very low level of complaints related to variable annuities.[12] From this low level of complaints, one can fairly infer a high degree of overall satisfaction with annuities and the advice and services provided by financial professionals with respect to annuity sales. For example, the National Association of Insurance Commissioners ("NAIC") reported 540 complaints related to the sale of variable annuities in 2014.[13] The LIMRA Secure Retirement Institute ("LIMRA") reports that industry-wide variable annuity sales totaled $140.1 billion in 2014. [14] This means that the NAIC confirmed only one complaint for every $259 million in variable annuity sales.

FINRA's dispute resolution statistics tell the same story. Consumers filed 3,822 arbitration cases with FINRA in 2014 of which 120, or only 3%, involved variable annuities.[15] Using the same industry-wide annuity sales figures from LIMRA, these cases represent one arbitration for every $1.1 billion in variable annuity sales. Mutual funds, on the other hand, accounted for approximately 10% of the FINRA arbitration cases.[16] Neither the FINRA nor the NAIC statistics suggest a wide-spread problem in the distribution of variable annuities or a pervasive problem regarding undisclosed conflicts of interest at financial firms selling these products. In sum, there is no evidence of abuse that justifies the dramatic upheaval in the regulatory framework that the DOL Proposals represent.

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[11] The reserve requirements adopted by the states provide assurance that the long-term contractual commitments insurers make to their variable annuity contract holders are appropriately funded and will be honored in the future – that is, that the benefits will be paid.
[12] We were not able to locate comparable statistics published by the SEC.
[13] This number represents closed confirmed complaints where a state insurance department has determined that a regulatory violation or insurance company error has occurred. National Association of Insurance Commissioners, *"Closed Confirmed Consumer Complaints by Coverage Type,"* (May 25, 2015) Web. <https://eapps.naic.org/documents/cis_aggregate_complaints_by_coverage_types.pdf>.
[14]LIMRA Secure Retirement Institute, *"U.S. Individual Annuity Sales 2014 Results."* (June 27, 2015), Web. <http://www.limra.com/uploadedFiles/limra.com/LIMRA_Root/Posts/PR/Data_Bank/_PDF/2014_year-end_AnnuityCompanyRankings.pdf>.
[15] Financial Industry Regulatory Authority, *"Dispute Resolution Statistic."* (May 2015) Web. <https://www.finra.org/arbitration-and-mediation/dispute-resolution-statistics>.
[16] *Id.*

Jackson supports a workable uniform best interest fiduciary standard for all account types and urges DOL to proceed with appropriate regulatory coordination.

This is not to say that there is not room for thoughtful improvement to the current regulation. For example, Jackson supports the creation of a practical best interest fiduciary standard for broker-dealers and investment advisers that would be uniformly adopted by the SEC, DOL, FINRA and the states to apply to all investors and all accounts; one that would not disadvantage a single cohort of investors.

One of the principal flaws of the DOL Proposals is that they create a markedly different, new and overly-prescriptive fiduciary standard that would apply only when financial advisors are working with a retail investor's IRA account. As a result of the application of this new standard, investors could be subject to up to six different standards of care depending on whether (i) their financial professional is a registered advisor or a broker dealer, (ii) their money is in an IRA account or not, and (iii) their financial professional is "conflicted" as defined by the Fiduciary Proposal. The creation of multiple fiduciary standards that apply to some, but not all, types of accounts and relationships will create significant confusion for investors and enormous regulatory complexity, risk, and expense for firms that currently offer annuities to investors. This confusion will likely result IRA account holders being ignored by financial advisors or charged more than they are currently due to their higher regulatory risk and paper-intensive requirements.

A comparison of the Proposed BIC Exemption to the current securities regulatory framework demonstrates substantial differences between the two sets of requirements. As a result of these differences in regulation, separate investors with the identical financial status, risk profile and income needs would experience different (i) standards of care, (ii) disclosures, (iii) available product sets, and (iv) potential fees based solely on whether the assets to be invested are or are not in a qualified retirement account. Similarly, an individual investor with both a qualified retirement account and a non-qualified account could receive different products and contracts, levels of tailored advice, and disclosures, with different fee structures, for each of her two accounts to address a single defined financial need.

Another flaw of the DOL Proposals is that they potentially create duplicative regulatory requirements. For example, some of the disclosures required by the Proposed BIC Exemption are unnecessary in light of the disclosures currently required under the federal securities laws. The Securities Act of 1933 requires issuers, like Jackson, to provide each purchaser of its variable annuities, including IRA customers, with a statutory prospectus that discloses all material features of the annuity, including fees, charges and conflicts of interests. This prospectus must be updated and delivered to each variable annuity owner annually. Failure to accurately and completely disclose all material features in the updated product prospectus exposes the company's officers and directors to strict liability enforcement actions by federal regulators and possible civil liability. In a coordinated framework, the DOL could deem delivery of the statutory prospectus to IRA customers as satisfying the product disclosure requirements in the DOL Proposals without the need for separate disclosures.

In contrast to these issues, a uniform fiduciary standard that applies to all investors and all account types would be far more investor friendly and far less complex and expensive for annuity providers and distributors to implement, with resulting savings and simplicity for investors. The creation of a uniform standard can be best achieved by coordination among all regulators with recognition of the current robust regulatory framework.

The DOL Proposals would create regulatory conflicts and significantly increase costs for market participants which would ultimately be borne by retail investors.

The DOL Proposals not only "go it alone" by creating a new and unnecessarily complicated regulatory structure, they also conflict with current SEC, FINRA, and state insurance and securities regulatory frameworks.[17] For instance, there are significant inconsistencies between some of the Proposed BIC Exemption's disclosure requirements and the federal securities laws regarding such critical items as performance calculations and prospectus disclosures.

For a detailed description of other regulatory conflicts and issues with the DOL Proposals, we refer you to the comment letters from the Insured Retirement Institute and the Financial Services Institute. Jackson agrees with the concerns raised in these letters and believes that they accurately summarize the impact to customers and extreme difficulty in complying with the DOL Proposals.

The types of inconsistencies between the federal securities laws and the Proposed BIC Exemption described above and in other industry comment letters will have serious consequences for the industry by exposing companies to dueling regulatory authorities with enforcement power and a corresponding increase in operational costs that are ultimately borne by investors. For this reason, the DOL Proposals should not be adopted. Rather, the DOL, the SEC and FINRA should address and resolve these inconsistencies and propose a uniform best interest standard that would mitigate the risk of the confusion and costs caused by a bifurcated regulatory regime. The standard should be carefully crafted by all three regulators to ensure consistency and avoid any implication that the financial professional is recommending the "best product" (which is a highly subjective standard) or the "cheapest product," (which would eliminate higher-cost/higher benefit products, such as annuities that provide guaranteed lifetime income). Disclosures could be refined to ensure that investors receive a clear and concise explanation of any potential material conflicts of interest and understand the possible impacts of those conflicts.

There will be numerous, significant, foreseeable, and adverse consequences to investors if the DOL Proposals are adopted, including severe limitation on investors' choice and higher costs.

If adopted, the Proposed BIC Exemption will provide the only means by which financial professionals and their firms can continue to receive compensation in traditional commission-based arrangements for IRA accounts. Jackson believes that it will be very difficult, if not impossible, for financial professionals and firms to comply with the requirements of the Proposed BIC Exemption. Many financial professionals and their firms will be (i) unable or unwilling to afford the high compliance costs of meeting the Proposed BIC Exemption, (ii) unwilling to use the more complex, higher cost variable annuity products with living benefit guarantees that will be offered in a qualified advisory account, or (iii) unwilling to accept the regulatory and legal liability risks. As a result, investors will face a much narrower selection of financial professionals as the market consolidates around a few large firms that can bear the cost of compliance and that will then gain larger market shares and ultimately control the advice market. In addition, millions of current

[17] As an example, if registered representatives of broker-dealer firms and the firms themselves are required to affirmatively state that they are fiduciaries with respect to recommendations made to IRA customers – as will be the case if they have to rely on the Proposed BIC Exemption – the question is raised regarding whether they will be able to continue to rely on the broker-dealer exclusion in the Investment Advisers Act of 1940 when recommending IRA products.

owners of variable annuities in IRA accounts, with aggregate assets of over $1 trillion[18], will face the prospect of ownership of a retirement product for which they will not receive ongoing advice or else face higher costs to receive that advice.

The Proposed BIC Exemption is unworkable as drafted and contains many requirements that are unclear.[19] To rely on the Proposed BIC Exemption, NPH and other broker dealers will need to (i) conduct a review of their currently-offered products for retirement consumers and make qualitative determinations ("best interest") about each product, (ii) assess whether the commission and compensation structure associated with those products exceeds undefined "reasonable compensation" standards or creates other possible conflicts of interest, (iii) develop detailed compliance systems for entering into written contracts with IRA customers in advance of a recommendation, and (iv) develop exhaustive pre-sale, post-sale and web-based disclosures. Jackson will need to create mechanisms to support broker-dealers – which will mean the development of expensive software programs, multiple information feeds, different product offerings and coordination on new contracts as to whether they meet new "good order" requirements prior to issue. Even with this support, Jackson's broker-dealer partners, who already operate on thin margins, will be required to develop systems to aggregate this information to provide the customized individual retirement investor reports required under the Proposed BIC Exemption.

We have attached as Exhibit A to this comment letter a chart that outlines various concerns with the three substantive disclosure requirements contained in the Proposed BIC Exemption. Given that a breach of the exemption's disclosure requirements will expose broker-dealers to potential DOL regulatory action and state law causes of action for breach of contract, including potential class action exposure, all firms and financial professionals will need to assess whether they can technically comply with the Proposed BIC Exemption, and equally important whether the risk is worth the cost of attempting to comply.

Broker-dealers that are unable to comply with all of the conditions of the Proposed BIC Exemption will be faced with a decision. For some broker-dealers, the DOL Proposals' ambiguous requirements and the unworkability of the Proposed BIC Exemption may force the decision to stop selling variable annuities to certain IRA customers and retirement plans. In addition, broker-dealers may be unwilling to provide advice on existing books of business because the requirements to execute an investment advisory agreement and charge level fee-based compensation are too onerous. If a broker-dealer desires to continue to sell variable annuities, it will be forced to radically transform its business model in order to continue to provide services to IRA customers without violating the DOL Proposals. For example, a broker-dealer could choose to comply with the DOL Proposals by eliminating all third-party compensation for products and investments offered to an IRA customer, and instead charge the IRA customer a level fee based on IRA account assets. Asset based fee programs, however, are not a panacea.[20] In practice, discriminating against commission-based arrangements in favor of level compensation fee-based arrangements will result in a lack of access to advice and retirement planning tools for millions of

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[18] "Annuities and Insurance 2014: The Evolution to Sustainable Retirement Income Solutions". (Exhibit 5.01) Publication. Cerulli Associates. 2014. Print.

[19] For further examples of the unworkable and unclear provisions of the DOL Proposals, we refer you to the comment letters from the Insured Retirement Institute and the Financial Services Institute.

[20] Indeed, the very first examination priority mentioned by the SEC Office of Compliance Inspections and Examinations in its Examination Priorities for 2015 is ensuring that investors saving for retirement are not inappropriately being offered, or transferred into, fee-based arrangements when commission-based arrangements may be in their best interest. SEC National Exam Program, Examination Priorities for 2015, January 13, 2015. <http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2015.pdf>.

Americans of modest means and higher costs to obtain those services for Americans with larger savings to invest.

Driving the industry to only fee-based account arrangements will have three primary detrimental impacts on IRA customers with modest-sized accounts:

1) Lack of Access to Financial Advice: Due to the higher minimum account requirements (generally above $25,000) associated with fee-based advisory accounts, many smaller account holders will not be able to obtain individualized financial advice. Jackson currently has a minimum account size of $5,000 for IRA accounts which is significantly lower than fee-based account minimums at most broker dealers and investment advisors. As of year-end 2014, over 75% of qualified accounts at our affiliated broker-dealer network, NPH, have assets under $100,000. These smaller account investors are the very individuals who should be encouraged to plan for retirement. These investors often need assistance in understanding their retirement needs and risk profiles, periodic in-person meetings to update their investment plan and advice during periods of market uncertainty. If such advice becomes available only on a fee basis, these investors will be able to find only a limited number of advisors willing to provide customized investment plans and ongoing advice given the costs and risks associated with serving the accounts.

2) Limited Product Options: These same investors may face limited choices of retirement investment products or find that only low fee products are considered in their best interest, regardless of their personal financial status and goals. Retirement products that provide guaranteed living benefits, such as variable annuities, will typically have higher fee structures than most other investment products that lack downside protection or guarantees because of their sophistication and the state-required insurance reserves that must be retained to assure that the annuity's guarantees are honored. The DOL Proposals favor products with lower overall fees and thus may eliminate or limit solutions such as annuities for retirement accounts.

3) Higher Cost to the Investor: Annuity products are long-term investments, especially given the presence of a living and/or death benefit guarantee. As long term investments, most annuity products include a declining surrender charge schedule. The surrender charge functions to reduce the mortality and expense charge to the investor. On the other hand, annuity products with no surrender fees typically charge a higher mortality and expense charge compared to a product that does include surrender charges. This is often referred to as the "cost of liquidity". For a long-term investor, the lower mortality and expense charges associated with traditional commission-based variable annuities result in lower overall costs to the client.

   One outcome of the DOL Proposals for those firms and financial professionals that elect not to use the Proposed BIC Exemption is a move to level-compensation fee-based products. Similar to annuity products that do not have a surrender charge schedule, fee-based products have a "cost of liquidity", meaning that the structure of a fee-based product offers full access to the account value at any time without penalty. As a result, the fee-based products have higher annual fees (when considering platform fees and investment advisory fee). When an investor has a long-term investment horizon, fee-based product fees will accumulate to a much larger amount over time when compared to a traditional annuity structure with a surrender charge

period. The table below documents the annual cost difference to a client and demonstrates that these costs will have a material impact on the account value overtime.

Variable Annuity Fee Based (fully liquid) vs. Traditional Based Structure (7-year surrender schedule) Comparison				
	Fee Based Prouduct	Fee Calculation	Traditional Product*	Fee Calculation
Account Size	$100,000		$100,000	
Average Mortality, Expense & Administration Fees (annual)	0.46%**	$460	1.30%	$1,300
Annual Contract Maintence Fee (waived for Accounts > $50,000	$0	$0	$0	$0
Average Advisory Fee (annual)***	1.25%	$1,250	n/a****	$0
Total Annual Fee		$1,710		$1,300
Annual % of Account Value		1.71%		1.30%

*B-share variable annuity with 7-year declining surrender charge schedule

** Carriers used to calculate average M&E&A: Prudential Premier Advisor, Nationwide Destination Architect 2.0

*** Average Advisory Fee (source: Investment News, "The 2014 Financial Performance Study of Advisory Firms), advisors have discretion to charge from 0.25% to 3.00% annually

****Commission paid by product manufacturer, is not deducted from account value at product issue

Living benefit and death benefit guarantees with a diversified portfolio of investment options are only available through a variable annuity. Variable annuities with guarantees are perfectly suited for retirement assets because they transfer risk to a product manufacturer and guarantee an income stream that an investor cannot outlive. By shifting these products to a fee-based product structure the DOL is substantially increasing the cost to the investor. This is not good for American savers. Investors should continue to have a true choice between a traditional product structure with a surrender charge period and a fee based product structure with full liquidity – not have that choice dictated to them by essentially eliminating traditional product structures arrangements.

Commentators who have acknowledged the detrimental impacts of the DOL Proposals on investors with modest-sized accounts have suggested that such investors should use "robo-advisors." This view is flawed due to several key reasons, including:

1) Robo-advisors may rely on assumptions that could be incorrect or do not apply to an investor's specific situation;
2) Robo-advisors automated output may not be right for an investor's financial needs. A small account investor may lose the value that human judgment, education and oversight and more personalized service can provide; and
3) Robo-advisors cannot manage investor behavior and do not have the ability to prevent irrational investment decisions such as panic selling, which may result in locked in losses and missed market gains. Managing investor behavior and avoiding costly market mistakes are some of the most important services a representative can offer.

The SEC's Office of Investor Education and Advocacy ("OIEA") and FINRA have issued an Investor Alert cautioning investors on the use of automated investment tools, including robo-advice.[21] In the Investor

[21] U.S. Securities and Exchange Commission, *"Investor Alert: Automated Investment Tools,"* (May 8, 2015). Web. (http://www.sec.gov/oiea/investor-alerts-bulletins/autolistingtoolshtm.html).

Alert, the OIEA cautions that while automated investment tools may offer clear benefits—including low cost, ease of use, and broad access—it is important to understand their risks and limitations before using them. A small account investor may not fully understand these risks and limitations without the guidance of a registered representative. Each investor has unique retirement goals and a unique financial situation and should be able to consult with a financial advisor that can help him or her develop a personal financial plan. Leaving small account investors with no other options than robo-advisers for obtaining advice on the management of their retirement assets may seriously undermine the Administration's goal of advancing the availability and use of lifetime income products and strategies.[22]

Robo-advisors are simply an electronic path to deliver standardized advice that already exists in a "do-it yourself" world including books and online resources. The robo-advisor market has existed, as has the opportunity to invest directly in funds and stock through discount platforms, for a long time. The use of these markets by investors, however, remains small and studies show that the majority of investors prefer individualized advice and dealing with a financial professional.[23] Similarly, investors are entitled to choices and should not be subject to regulatory changes that eliminate or restrict those choices.

Investors have been negatively impacted by the elimination of traditional compensation structures in other countries.

We do not need to speculate to forsee that the DOL Proposals will eliminate access to advice for millions of Americans. Jackson's parent company, Prudential plc, had a firsthand view of the negative impact of UK legislation similar to the DOL Proposals. The UK Financial Services Authority (predecessor to the current Financial Conduct Authority ("FCA")) launched the Retail Distribution Review ("RDR") in 2006 which led to a number of rules that came into effect at the end of 2012 and were designed to make the retail investment market work better for consumers. A key provision of these rules was the elimination of commission payments from product providers to advisers and platforms (i.e., third party payments). The result of the RDR reforms has been the withdrawal of 26% of total FCA registered advisers from providing financial advice to retail clients of moderate means during the period leading up to and following the effective date of the new rules. [24]

These reductions have resulted in an "advice gap" as advisors withdrew from serving segments of the UK population that are no longer profitable for the advisor. This advice gap means that many small account investors are now unable to get the financial advice they need. Barclays estimates that UK customers now require a minimum of GBP 150,000 (USD $230,000) of financial assets in order to receive face-to-face tailored financial advice.[25] Separately, Deloitte has estimated that 5.5 million individuals (approximately 11% of the UK adult population) will either cease using financial advisors or lack access to them as a result of the RDR changes.[26]

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[22] *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 (Feb. 2, 2010).

[23] Wells Fargo. *Wells Fargo/Gallup Survey: Investor Optimism Surges 21 Points in Q1*. Wells Fargo, 5 Mar. 2015. Web. 20 July 2015. <https://www.wellsfargo.com/about/press/2015/investor-optimism-surges_0305>.

[24] Barclays, "*Asset Management/Life Insurance: UK Savings Conference 2015: What We Learnt. Working Paper,*", 9 (June 9, 2015) Web.<https://live.barcap.com/PRC/servlets/dv.search?contentPubID=FC2145798&bcllink=decode>

[25] *Id.*

[26] The Deloitte Report on RDR.

The DOL Proposals are even more complex than the UK's RDR rules. We project that they will have a similar or more severe impact on the ability of retirement investors with smaller savings and incomes to obtain retirement advice. This absence of advice will equate to an absence of access to insurance products with lifetime income guarantees and death benefits. The DOL Proposals will therefore have the destructive result of denying to many Americans the type of guarantees and security that regulators around the world aspire to provide to their citizens. Our discussions with regulators in Asia and the UK, where products similar to variable annuities with guarantees do not exist, indicate that they are looking for the introduction of such products in their marketplaces. These regulators view such products as a way to augment private savings development and ultimately the development of large pools of capital to support economic growth.

In addition to the adoption of a coordinated, uniform fiduciary standard of care, there are other options available to the DOL that would work better for investors than the DOL Proposals.

The inclusion of variable annuities within the scope of PTE 84-24 would serve investors and provide them choices in the annuity market.

The 84-24 Amendment would change the current regulatory structure by, among other things, excluding variable annuities from the scope of PTE 84-24.[27] Jackson asks that 84-24 Amendment be modified so that variable annuities remain within the scope of the PTE 84-24 in recognition of the low number of variable annuity complaints and the expansive existing regulatory framework at both the state and federal level regarding variable annuities. We believe this modification is warranted given (i) the additional investor protections in the 84-24 Amendment that would apply to variable annuities, (ii) the detrimental impact to retirement consumers if variable annuities are removed from PTE 84-24, and (iii) the similarity among fixed, fixed indexed, and variable annuity product types.

If variable annuities are included within the scope of PTE 84-24, the current regulatory framework governing variable annuities will be further augmented by new requirements contained in the 84-24 Amendment. The 84-24 Amendment requires that a financial professional recommending a sale must act in the "best interest" of the customer and cannot make any misleading statements. In addition, the financial professional must disclose all "material conflicts of interest." These additional requirements will provide further protections to retirement consumers purchasing variable annuities.

Excluding variable annuities from PTE 84-24 will have an adverse impact on retirement investors. Retirement consumers need a straightforward way to purchase variable annuities and to continue to receive advice on their investment options under existing variable annuities contracts. The continued inclusion of variable annuities within PTE 84-24 is a workable solution, which will not only benefit the current owners of variable annuities but also those investors who desire to benefit from the potential upside of the markets by purchasing a product that can meet their future retirement needs while enjoying guarantees designed to protect them from market volatility. If variable annuities are excluded from the scope of PTE 84-24, and the Proposed BIC Exemption is adopted, many advisors may choose to abandon

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[27] Currently, PTE 84-24 exempts all annuity transactions, whether for variable or fixed annuities, from the prohibited transaction provision and therefore allows the fiduciary to receive compensation, including commission-based compensation, from an insurer for all annuity sales. Department of Labor, "*Class Exemption for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies and Investment Company Principal Underwriters*," 49 Fed. Reg. 13208 (Apr. 3, 1984), amended at 71 Fed. Reg. 5887 (Feb 3, 2006).

the variable annuity market and concentrate on the sale of fixed and fixed indexed annuity products, which may not meet the needs of the retirement investors as fully as variable annuities. This outcome significantly limits the investment choices of existing and future investors, and may effectively preclude investors who currently own variable annuities in IRA accounts from receiving advice needed to fully optimize the benefits provided by their contracts. These existing investors need and seek advice related to their subaccount allocations, resetting of benefits, distribution and income choices and other options available under their contracts. Variable annuities should continue to be eligible for PTE 84-24.

Given the impact on variable annuity contract owners, there is also no rational basis for disparate treatment of variable annuities, as compared to other annuity products. Variable annuities are subject to a robust and deliberate state and federal regulatory structure, designed to protect annuity contract owners. While there are similarities between the characteristics of, and benefits provided to, an investor by variable and fixed annuities, variable annuities are subject to a regulatory structure that provides further oversight and protections for investors as compared to fixed annuities. By way of example, sales of variable annuities are subject to regulation by the SEC and FINRA, while fixed annuities are not within the purview of self-regulatory organizations or federal regulators. As noted above, it is important that variable annuity investors continue to benefit from the advice of professionals relative to the options available under their contracts, including underlying investment portfolios and options relative to their guarantees. Given the current regulatory protections and the greater need for advice for investors owning variable annuities, there is no rational basis for excluding variable annuities from PTE 84-24. The current regulation, and the importance of retaining the current advice model, suggest that PTE 84-24 is even more appropriate for variable annuities than other product types.

Investors will be harmed if the DOL does not provide a reasonable period for compliance and meaningful grandfathering of existing IRA products.

To the extent that the DOL Proposals are adopted in some form, the DOL must reasonably and substantially extend the period for compliance. As drafted, the Proposal provides an eight-month implementation period for thousands of financial intermediaries, insurance companies and other product providers to come into compliance with a proposal that has unprecedented scope, breadth and implementation costs. [28] In addition, as drafted, the DOL Proposals will immediately turn millions of interactions between financial professionals and their IRA customers into fiduciary relationships with onerous additional compliance obligations that create the immediate risk of private lawsuits. For these reasons, Jackson believes the industry will need at least <u>three</u> years to implement these changes, and may well need more time if some of the requested changes to the DOL Proposals are not made.

In addition, we strongly urge the DOL to fully grandfather IRA accounts existing before the applicability date of the final regulation. As noted above, the new regulation carries extensive implementation costs that were not priced into currently outstanding IRA products or those being offered now because annuities are long-term contracts with prices set at time of sale. In addition, the DOL Proposals when effective will immediately turn interactions with existing IRA account owners into fiduciary relationships that create undue compliance burdens on the financial professional. For example, depending on the reading of the Fiduciary Proposal, the average representative may have difficulty in providing normal servicing on existing IRA accounts, including even routine advice regarding Required Minimum

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[28] The breadth of the implementation impact is evident in the "Overall Summary" discussion in the Proposed BIC Exemption which states that "in order to meet the conditions of the PTE, 2,800 financial institutions will produce 86 million disclosures and notices during the first year of the PTE . . . ." 80 Fed. Reg. 21983.

Distributions. If a current IRA customer asks a representative for assistance in identifying an asset for liquidation, this assistance could trigger fiduciary status and compliance with all Proposed BIC Exemption disclosure and contract requirements. Unless existing IRA accounts are grandfathered, registered representatives may be forced to abandon IRA account owners rather than trigger additional disclosure and liability risks. Broker-dealers may also have to abandon existing IRA customers because the compensation arrangements for their existing IRA accounts – which were established when the investments for the IRA account were first purchased – cannot be modified to conform to the new business model.[29]

The adoption of the DOL Proposals will harm the retirement planning of millions of Americans.

Millions of Americans caught in the shift from traditional pension plans to individual retirement plans are facing the fact that their current income and savings will not sustain them in retirement. We are deeply concerned about the many adverse, foreseeable consequences that will result if the DOL Proposals are adopted as currently drafted. The material adverse effect on American investors of modest means needs serious consideration. Variable annuities provide a unique product for these investors by providing lifetime guarantees. Investors have recognized the value of variable annuities by purchasing over $719 billion of variable annuities in the last 5 years.[30] The adoption of the DOL Proposals will potentially push under saved investors and products outside of the traditional advice channels and significantly reduce the choices retirements investors have available.

We appreciate the opportunity to respond to the DOL Proposals. If we can be of any further assistance to the DOL as it considers these comments, please contact me.

Sincerely,

James R. Sopha
President
Jackson National Life Insurance Company

[29] Financial professionals will be unable to provide "education" relative to existing products due to the proposed modifications to Interpretative Bulletin 96-1, which will functionally prohibit financial professionals from mentioning the product without triggering fiduciary status.
[30] "Chapter 3: State of Industry" *2015 IRI Factbook: A Guide to Information, Trends, and Data in the Retirement Income Industry.* Washington, D.C.: Insured Retirement Institute. 2015. 58. Print.

Exhibit A

IMPACT ON RETAIL FIRMS OF BIC EXEMPTION DISCLOSURE REQUIREMENTS

Disclosure Requirement	Proposal Requirements	Impact on Retail Firms
Pre-Transaction Cost Disclosure	"Prior to the execution of the purchase of any Asset . . . the Adviser furnishes the Retirement Investor a chart that provides, with respect to each Asset recommended, the Total Cost … of investing in the Asset for 1, 5 and 10 year periods expressed in dollar amount, assuming an investment of the dollar amount recommended by the Adviser and reasonable assumptions about investment performance that are disclosed." The disclosure chart would have to be provided for any subsequent purchase if the Total Cost has materially changed, but in all cases if the subsequent purchase is greater than twelve months from the date the last purchase where a chart was provided.	The ability to provide the required pre-sale disclosure is dependent upon (a) availability of accurate real-time information (b) the ability to build (or access) systems that aggregate this information in a manner producing the required disclosure prior to the sale and (c) internal policies and procedures to enforce and test for delivery of an initial disclosure and disclosures for qualifying subsequent investments. Factors that will impact these requirements include the type of investment, the sponsor of the investment, and the various data points that must be available. The Proposal defines Total Costs to include the initial Acquisition Cost, Ongoing Costs of continued ownership of the investment, Disposition Costs of selling or surrendering the investment and Other (like contingent deferred sales charges that phase out over time) which are assumed to also include items such as custodial fees or account maintenance fees. Total Costs are influenced by the type of investment purchased and the manner in which the investment is purchased. Firms may currently offer many thousands of investment products that can be purchased in IRA accounts. Many of these investments have Ongoing Costs, such as management fees and other costs with ownership of a mutual funds, UITs, ETFs, and variable annuities. These Ongoing Costs may change at the discretion of the product sponsor with no advance notice to the Firms. Therefore, Firms will need real time information to populate disclosure charts. Even if the product sponsors can provide ongoing data feeds with the necessary information regarding these Ongoing Costs, Firms will need to spend considerable sums to build and maintain aggregation systems to house all of the information and generate pre-sale disclosures. Practically speaking this would be difficult with full cooperation by all sponsors, and impossible without that cooperation. Ultimately we believe that Firms will seek to rely upon product sponsors to provide a calculator tool to allow the Firm's advisor to generate a disclosure chart. Firms will ask each product sponsor to build a calculator to support its product set, pulling in Total Costs for ownership of the product with that sponsor. To the extent that Sponsors are unwilling to build a calculator, it will impact the ability of the Firm to make new sales in the product. Costs may also be impacted by the distribution channel. Firms will typically offer products through two channels - direct-purchase or clearing platforms. Direct-purchase is typically packaged products such as mutual funds, annuities or REITs. Direct-purchases are made through the channel established by the sponsors. The sponsor of the product arranges for custody of the assets and handles settlement and cashiering functions. Clearing platform purchases are on an omnibus basis, with the clearing entity providing for custody, settlement, cashiering and other functions related to

Exhibit A

IMPACT ON RETAIL FIRMS OF BIC EXEMPTION DISCLOSURE REQUIREMENTS

Disclosure Requirement	Proposal Requirements	Impact on Retail Firms
		the purchase. While some Firms are self-clearing (with internal clearing functions), many are introducing broker/dealers clearing through another broker/dealer, on a fully disclosed basis. The NPH Firms clear primarily through Pershing LLC (a BONY company), with one firm also clearing through National Financial Services LLC (a Fidelity company). Some products are offered only on a clearing platform or direct-purchase, others may be purchased either way. For example, individual securities like stocks and bonds may only be purchased on the clearing platform. Variable annuities are generally only available via direct-purchase (although some clearing platforms may network these positions for purposes of showing on a consolidated statement). Mutual funds generally may be purchased either direct-purchase from the sponsor or via a clearing platform. Some firms do require that all mutual fund purchases are conducted through the clearing firm. These models do have some impact on costs and aggregation of data to make calculations. The distribution model impacts the costs associated with holding the account and potentially relative to transactions, such as ticket charges, commission calculations, and account maintenance fees. For example, direct positions may have a lower account maintenance fee per account as compared to a clearing firm, and may not impose transaction or ticket charges. If the rule is adopted as proposed, Firms will need to seek assistance from the product sponsors and clearing platforms to provide required data points and a front-end calculator to assist with new sales. Product sponsors (such as mutual fund companies and variable annuity companies) will be asked to provide a tool that advisers can use to generate a compliant disclosure. Due to the number of mutual fund and variable annuity subaccount types, changes to terms and internal costs, and other variables that could impact the calculation, Firms will necessarily need to rely upon the product sponsors to provide a calculator for new sales in their respective products. Firms will not have this information today in a workable format, and do not have any control over periodic changes that could occur. Therefore, product sponsor development of a proposal generation system is critical to any attempt to qualify under the BIC Exemption.

Exhibit A

IMPACT ON RETAIL FIRMS OF BIC EXEMPTION DISCLOSURE REQUIREMENTS

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<tr><th>Disclosure Requirement</th><th>Proposal Requirements</th><th>Impact on Retail Firms</th></tr>
<tr><td>Annual Client Disclosure</td><td>"The Adviser or Financial Institution provides the following written information to the Retirement Investor, annually within 45 days of the end of the applicable year, a succinct single disclosure:
• A list identifying each Asset purchased or sold during the applicable period and the price as which the Asset was purchased;
• "A statement of the total dollar amount of all fees and expenses paid … (directly or indirectly) with respect to each Asset purchased, held or sold during the applicable period"; and
• "A statement of the total dollar amount of all compensation received by the Adviser and Financial Institution, directly and indirectly, from any party, as a result of each Asset sold, purchased, or held by the [the account] during the applicable period."</td><td>As with the pre-sale disclosure chart, the annual client disclosure requires cooperation from product sponsors and clearing firms to aggregate data from multiple sources. Unlike the pre-sale disclosure chart, retail firms will not be able to rely upon sponsors to potentially provide calculator tools to generate the disclosure. Firms will need to develop specifications and initiate programming to create the tool, or find other means to aggregate various internal and external data points into a "succinct single disclosure".

For purposes of the annual client disclosure, all of the data requirements and challenges provided above (relative to the pre-sale disclosure) would remain. Firms would need to rely upon the product sponsors, clearing firms, custodians, and others to provide the information necessary to populate the succinct single disclosure.

Assuming that the Firm would be able to get this data, additional operational requirements would include:
• Building an internal tool to aggregate the data into the succinct single statement, at the account owner level
• Aggregate sales and purchases from multiple data sources to obtain the list of each Asset purchased or sold during the applicable time period, with applicable price information.
• State total fees and expenses paid (direct and indirect) in dollars from all sources at the client level.
• Separately state the compensation received by the Representative and the Firm from all sources (including non-cash compensation and revenue sharing payments noted below)
• Firms also receive indirect compensation, by way of revenue sharing payments and marketing support/non-cash compensation (both at the firm and representative level). Firms would need to develop processes to aggregate all non-cash comp and allocate to each account despite separate holding periods and fluctuation in account values

The development costs for these systems will be a significant and will take an extended period of time. As noted above, the ability to provide the required disclosure is also dependent upon the ability of the sponsors to provide information necessary to populate the required disclosures.</td></tr>
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Exhibit A

IMPACT ON RETAIL FIRMS OF BIC EXEMPTION DISCLOSURE REQUIREMENTS

Disclosure Requirement	Proposal Requirements	Impact on Retail Firms
Web-Page Disclosure	"The Financial Institution maintains a website, freely accessible to the public, which shows the following information – • The direct and indirect material compensation paid to the Advisor, Financial Institution, and any Affiliate for services provided in connection with each Asset (or if uniform across a class of Assets, the class of Assets) that [the account] is able to purchase, hold, sell through the Advisor or Financial Institution and that the [account] has purchased within the last 365 days. The compensation may be expressed as a monetary amount, formula, or percentage of the assets involved in the purchase, sale or hold." • The source of the compensation and how the compensation varies within and among Assets." • Information must be in a "machine readable" format	Based upon the requirement, firms would need to build a web-page containing the required information for all products currently available or held by all IRA owners with the firm. Note that the language is extremely broad in that it addresses investments that clients are ". . . able to purchase, hold, sell through the Advisor or Financial Institution". This includes not only the historic book of business that is developed by firm over the years of their operations, but investments that are not sold by the firm but rather transferred in with clients or products that a firm allows a client to deposit into an account as an accommodation. Therefore, there are thousands of products that would need to be included in the disclosure, many of whom the firms may not currently offer but allow clients to "hold". It will be extremely difficult if not impossible to obtain all the required information. At a minimum, this disclosure requirement should be limited to products currently offered for sale at the firm. The compensation definitions are vague. Direct compensation could be considered the known and disclosed commissions to the firm and adviser. However, what will constitute material indirect compensation is unknown. It may include revenue sharing payments, marketing support and non-cash compensation. The materiality threshold is not adequately defined. Additionally, the process to allocate revenue sharing paid by a single product sponsor across multiple products would be very difficult. The requirement to break compensation between the advisor and the firm is unworkable. Payouts to representatives are individually negotiated and subject to change based upon production levels. Under securities regulations, firms can modify the compensation at the representative level across all products based upon the level of compensation. This requirement would effectively necessitate separate disclosure page for each representative associated with a firm. For brokerage accounts, most firms allow representatives to negotiate commissions with their clients based upon the scale set by the firm. The proposal does not account for a disclosure to accommodate that free-market negotiation for commissions on individual equities trades. The requirement states that we must provide this for products offered "through the Advisor and the Financial Institution". Many advisors are independent contractor representatives, who may offer fixed insurance products directly through insurance companies or may own their own registered investment adviser. It is unclear whether firms will need to build out their websites to accommodate outside business activity fixed insurance sales and outside registered investment advisory business activity offered by the representative. It is also unclear how bank personnel who are also registered with our firms, who may offer bank CDs or be involved in the trust operations would be included.