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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")

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

To Whom It May Concern:

Jackson National Life Insurance Company[1] ("Jackson") is pleased to provide these supplemental comments with respect to the Department of Labor's ("DOL") notice of proposed rulemaking concerning the Fiduciary Proposal, the Proposed BIC Exemption and the 84-24 Amendment (collectively, the "Proposal"). This letter addresses certain comments made during the hearings on the Proposal from August 10-13, 2015 (the "Public Hearings").

We are encouraged by the willingness of the DOL to address the concerns raised regarding the Proposal. Jackson believes the most important concern raised is the critical need to modify the Proposal to ensure that it does not prohibit or unduly restrict investors' access to variable annuities. To achieve this objective, the DOL should restore variable annuities to the scope of PTE 84-24. The continued inclusion of variable annuities in PTE 84-24 will allow the DOL to meet its objectives without adversely affecting, or eliminating,

[1] Jackson National Life Insurance Company is a stock life insurance company organized under the laws of the state of Michigan since 1961. Jackson submitted original comments to the Proposal in a letter to the DOL dated July 21, 2015.

investors' access to important retirement planning tools, including lifetime income guarantees and death benefits.

The Public Hearings confirmed that variable annuities serve a critical role in retirement planning.

A consistent theme in the comments at the Public Hearings was that all members of the retirement planning industry and regulators want what is in the best interest of Americans planning for, or in, retirement. There was also consensus that investors are best served by having access to a wide variety of investments, products and guarantees from which they can select to construct a solution that meets their financial goals and long-term retirement savings needs. While a variable annuity may not be the right choice in every situation, its inclusion in a retirement plan is likely to be the right choice for millions of Americans who want (and need) the opportunity to participate in market appreciation while also obtaining guaranteed lifetime income and death benefits.

The assurance that investors will have some minimum level of income is critical given that 41% of people ages 55 to 64 and 52% of people ages 65 to 74 have no retirement savings.[2] Investors must save more income to make up this savings gap, and annuities with living benefit guarantees provide a way to do so while still having downside protection.

During the Public Hearings, some commentators suggested variable annuities are similar to other securities-based investments. These commentators misunderstand the unique benefits of variable annuities, which offer upside market opportunity <u>and</u> downside market protection. Variable annuities with living benefit guarantees provide investors opportunities for growth of income through market participation while also providing a guarantee that their income will not drop and that they will not outlive that income. No other investment product in the world can offer this value to an investor.

Secretary Perez has publicly discussed one example when an investor had a negative experience with a variable annuity.[3] There are millions of other examples, however, when investors benefited from the protections provided by an annuity[4]. On the heels of the global financial crisis Americans lost billions of dollars in retirement savings. During this time, not a single Jackson variable annuity investor suffered a reduction in their contractual guaranteed minimum withdrawal benefits.

Death benefit guarantees are also unique features of an annuity. If an owner dies when the market value of the contract has decreased, the death benefit feature guarantees that his or her beneficiary will receive an amount at least equal to the original premium invested into the contract. In fact, since 2008 Jackson

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[2] United States Government Accountability Office. *Retirement Security: Most Households Approaching Retirement Have Low Savings.* GAO-15-419, May 12, 2015. Available: http://www.gao.gov/assets/680/670153.pdf. [2 June 2015].

[3] This example was discussed by Scott Stolz from Raymond James during the Public Hearings. *See Conflict Of Interest Proposed Rule, Related Exemptions and Regulatory Impact Analysis Hearing Before the Dep't of Labor Emp. Benefits Sec. Admin.* at 323 (Aug 10, 2015) [hereinafter *Conflict of Interest Public Hearing*] (statement of Scott Stolz, Senior Vice President, Raymond James), available at http://www.dol.gov/ebsa/pdf/1210-AB32-2-HearingTranscript1.pdf.

[4] See examples provided in the following testimony at the Public Hearings: *Conflict of Interest Public Hearing* at 501 (Aug. 11, 2015) (statement of J. Lee Covington, II, Senior Vice President and General Counsel, Insured Retirement Institute), available at: http://www.dol.gov/ebsa/pdf/1210-AB32-2-HearingTranscript2.pdf; *Conflict of Interest Public Hearing* at 123 (Aug. 10, 2015) (statement of Nick Lane, Chairman, Insured Retirement Institute), available at: http://www.dol.gov/ebsa/pdf/1210-AB32-2-HearingTranscript1.pdf.

has paid out over $600 million in death benefits that exceeded the actual contract value. Jackson's excess death benefit claims represented 5.5% (2014) to 32.41% (2009) of the total variable annuity claims.

Year	Total VA Claims	Excess DB	% Excess over Total
2008	$ 378,722	$ 75,582	19.96%
2009	$ 452,171	$ 146,556	32.41%
2010	$ 558,840	$ 92,237	16.51%
2011	$ 680,772	$ 73,398	10.78%
2012	$ 822,921	$ 86,442	10.50%
2013	$ 934,221	$ 68,148	7.29%
2014	$ 1,072,490	$ 59,012	5.50%
Total	$ 4,900,137	$ 601,375	12.27%

[Table Values are in thousands]

Of course, products that offer the opportunity for market appreciation, guaranteed income for life, and death benefits may not be offered to investors at the same cost as products (such as mutual funds and fee based advisory accounts) that do not offer income guarantees and death benefits. Jackson joins the commentators at the Public Hearings who warned that the Proposal's focus on the use of low cost products will result in variable annuities not being offered to investors despite the fact that any fee differential is justified by the significant additional guarantees and benefits offered by a variable annuity.[5] The objective of the Proposal should be to ensure that each customer gets the product that is in his or her best interest – not just the cheapest products. The Proposal should be revised to make sure that the determination of what is in a client's best interest includes both costs and benefits.

Variable annuities should remain covered in PTE 84-24 with other insured products.

Jackson supports the commentators at the Public Hearings who discerned no logical reason why variable annuities should be treated differently than other insurance products, and who offered many persuasive reasons why variable annuities should be treated the same as other insurance products. The presence of guarantees means that variable annuities are insurance products that have more in common with fixed annuity products that have minimum interest guarantees than they do with mutual funds.

While fixed and variable annuities may provide different benefits, all annuities serve a primary goal of providing insurance protection guarantees against longevity and other risks. All annuities offer important retirement income options for consumers who must find a way to provide lifetime income now that Defined Benefit Plans are no longer provided to the average worker. Recent changes to the structures of fixed indexed annuities (FIAs) and variable annuities, including increasingly complex indexes within FIAs, the addition of risk managed indexes within FIAs, the addition of guaranteed minimum withdrawal guarantees on FIAs and lower cost variable annuity GMWB options, have resulted in these products becoming remarkably similar. These benefits and similarities support the consistent treatment of all

[5] *See Conflict of Interest Public Hearing* at 119 (Aug. 10, 2015) (statement of Nick Lane, Chairman, Insured Retirement Institute), available at: http://www.dol.gov/ebsa/pdf/1210-AB32-2-HearingTranscript1.pdf; *Conflict Of Interest Public Hearing* at 343 (Aug 10, 2015) (statement of Scott Stolz, Senior Vice President, Raymond James), available at http://www.dol.gov/ebsa/pdf/1210-AB32-2-HearingTranscript1.pdf.); *Conflict of Interest Public Hearing* at 385 (Aug. 11, 2015) (statement of Carl Wilkerson, Vice President and Chief Counsel, American Council of Life Insurers), available at: http://www.dol.gov/ebsa/pdf/1210-AB32-2-HearingTranscript2.pdf.

annuities under one exemption as opposed to singling out variable annuities for the more onerous and ill-suited requirements of the Proposed BIC Exemption.

The proposed amendments to PTE 84-24 for the sale of annuities should be revised, continuing to keep all annuities, fixed and variable, in the same category of insurance. Having a separate exemption for all annuities provides a number of regulatory benefits. A separate exemption highlights the fact that annuities are different from other investments, minimizes inappropriate comparisons of fundamentally different products/services and allows consumers to easily compare all annuity products under one set of rules.[6]

Investor rights will continue to be protected under PTE 84-24 through the required disclosure of conflicts of interests, reasonable compensation requirements, and restrictions on misleading statements. These protections will be supplemented by the existing regulatory structure and disclosures already required for variable annuities by the Security and Exchange Commission and the Financial Industry Regulatory Authority. PTE 84-24 can be further amended to meet the DOL objectives by providing for a workable best interest standard that requires the advisor to put the client's interests before the advisor's interests. The addition of an enforceable best interest standard is discussed in the supplemental response letter submitted by the leading life insurance companies in the United States, including Jackson, and dated September 24, 2015. We encourage the DOL to review and adopt the proposed language contained in the letter.

The inclusion of variable annuities within PTE 84-24 will only work, however, if the definition of insurance commission is revised. The Proposal amends the exemption to define insurance commission to mean only a sales commission paid by the insurance company. This revised definition excludes revenue sharing payments, administrative fees or marketing payments, or payments from parties other than the insurance company or its affiliates. As the number one writer of variable annuities and affiliate of a top 10 independent contractor broker-dealer, Jackson understands the negative impact to our broker-dealer partners of excluding these other types of payments from the definition of commission. This negative impact is further described in the comment letter from National Planning Holding, Inc. dated September 24, 2015.

Jackson supports grandfathering of business issues prior to the Proposal's applicability date.

We continue to strongly urge the DOL to fully grandfather IRA accounts existing before the applicability date of the final regulation. As discussed by several commentators during the Public Hearings, failure to grandfather existing accounts essentially results in the retroactive application of the Proposals.[7] While existing accounts may gradually migrate from commission to fee based accounts over time, it should be

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[6] For additional support for including variable annuities in PTE 84-24, please refer to the following testimony at the Public Hearings: *Conflict of Interest Public Hearing* at 119 (Aug. 10, 2015) (statement of Nick Lane, Chairman, Insured Retirement Institute), available at: http://www.dol.gov/ebsa/pdf/1210-AB32-2-HearingTranscript1.pdf; *Conflict of Interest Public Hearing* at 225 (Aug. 10, 2015) (statement of Stephen Saxon and Thomas Roberts, Groom Law Group Chartered), available at: http://www.dol.gov/ebsa/pdf/1210-AB32-2-HearingTranscript1.pdf; *Conflict of Interest Public Hearing* at 998 (Aug. 12, 2015) (statement of Michael L. Hadley and Joseph F. McKeever, Davis and Harman LLP, on behalf of the Committee of Annuity Insurers), available at: http://www.dol.gov/ebsa/pdf/1210-AB32-2-HearingTranscript3.pdf.

[7] *Conflict of Interest Public Hearing* at 1017 (Aug. 12, 2015) (statement of Jason Bortz, Capital Group Companies), available at http://www.dol.gov/ebsa/pdf/1210-AB32-2-HearingTranscript3.pdf; *Conflict of Interest Public Hearing* at 132 (Aug. 10, 2015) (statement of David Blass, General Counsel, Investment Company Institute), available at: http://www.dol.gov/ebsa/pdf/1210-AB32-2-HearingTranscript1.pdf.

done as clients invest new money or transfer money to new investments. Unless existing IRA accounts are grandfathered, registered representatives may be forced to abandon IRA account owners rather than trigger additional disclosure, increased cost to the client, and liability risks.

Implementation of the Proposed Rules as drafted will result in issues that mirror the current problems in the UK resulting from the Retail Distribution Review.

Throughout the Public Hearings, Timothy Hauser, DOL Deputy Assistant Secretary for Program Operations, indicated that the Proposal is not intended to ban commissions. Various panelists and comment letters, however, gave examples that demonstrate that without significant revisions, a predictable consequence of the Proposal will be the elimination of products offered on a commission basis, an increase in fee-based advisory arrangements, and a concomitant retreat of financial advisors from the low and middle market, leaving less wealthy investors without anyone to advise them.

In 2012 UK legislation eliminated commission payments to advisers and platforms through the implementation of legislation that came into effect as the result of a Retail Distribution Review ('RDR') conducted by the UK Financial Services Authority (predecessor to the current Financial Conduct Authority ("FCA")). While the intention of the RDR reforms was to improve the nature of financial advice received by consumers, its actual impact has been to shrink the overall financial advice market. After the adoption of the RDR, 26% of FCA registered advisors withdrew from providing financial advice to retail investors of moderate means. Barclays estimates that UK consumers now require financial assets of at least GBP 150,000 (USD 230,000) in order to receive tailored face-to-face financial advice. The subsequent "advice gap" that has emerged for small account investors has led to the UK government recently launching a major new review into the UK financial advice market (the "Review') to determine how the insurance market can work better for consumers. The Review, which was announced on August 3, 2015, is being led by the UK Treasury and the FCA and will specifically consider "the provision and effectiveness of advice across retail markets to assess whether differences in regulatory requirements around advice lead to unintended consequences for consumers and firms." The initiation of the Review clearly suggests that the consequences of the RDR have had a negative impact on the UK market.

Jackson's parent company, Prudential plc, is one of the largest life insurers in the UK market[8] and has had first-hand experience with the RDR reforms. We believe that the findings of the UK government, which will have experienced more than three years of the impact of eliminating commission payments to financial advisers by the time of the publication of the Review's findings, will be particularly informative to the DOL and should be considered in advance of moving ahead with the DOL Proposal.

The return of variable annuities into the scope of PTE 84-24 will assist the retirement planning of millions of Americans.

Many Americans are now facing the hard reality that their current income and savings will not sustain them through their retirement years. For these investors, variable annuities alone offer a genuine opportunity for market appreciation while providing both lifetime guarantees and death benefits. Including variable annuities within 84-24 will insure that investors can continue to utilize this critically important product in planning for their retirement.

[8] 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.

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