January 2, 2024

Submitted Electronically

Office of Regulations and Interpretations and,
Office of Exemption Determinations
Employee Benefit Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: RIN: 1210-AC02, Definition of Fiduciary
Application No. D-12057, PTE 2020-02
Application No. D-12060, PTE 84-24
Application No. D-12094, PTEs 75-1, 77-4, 80-83, 83-1, and 86-128

Dear Sir or Madam:

On behalf of Principal Financial Group® (Principal®), we are submitting comments regarding the Department of Labor's (the "Department") proposed rules ("the Proposed Rule") published on November 3, 2023 modifying the definition of an investment advice fiduciary under ERISA and amending certain prohibited transaction exemptions.

Principal helps people and companies around the world build, protect, and advance their financial well-being with our retirement, insurance, and asset management expertise. Our comments and observations are based on more than 140 years of financial services experience, including over 80 years in the retirement industry.

- In the U.S., we currently provide retirement services, including recordkeeping, investment, education, and administrative services to more than 48,000 employers for their retirement plans covering 13 million employee participants, including more than 34,000 retirement plans of small businesses and their 815,000 employee participants.

- In conjunction with affiliated financial professionals, we provide investment services to more than 600,000 IRA customers. Additionally, our affiliated financial professionals provide investment education and financial planning guidance to individual investors outside of their employer-sponsored plans.

- We are committed to serving the public's retirement needs. We have over 5,100 employees who are dedicated to supporting retirement plans and individual investors. We have approximately 880 employees and over 1,100 affiliated financial professionals located across the country who work directly with small plan sponsors, retirement plan participants, retail investors, and financial professionals on a daily basis. They answer questions, conduct enrollment and education meetings, and provide one-on-one financial education to clients at their worksite, at their home, or over the phone. Our combined customer service centers receive more than 7,000 requests daily – and more than 1.95 million inquiries each year from individuals seeking information and assistance. These numbers don't begin to address the calls and meetings that over 100,000 unaffiliated financial professionals and their staff are having with our mutual clients and their participants on a daily basis.

- Annuities serve a valuable and unique role in meeting Americans' retirement security needs. They are the only financial vehicle that guarantees income throughout retirement, setting them apart from mutual funds and other investments. The costs of annuities support the unique nature of the guarantees. Principal Life Insurance Company currently supports the guarantees of over 190,000 in-service annuity contracts of all types.

- Through our registered investment advisers, our asset management business unit's assets under management were $507 billion as of September 30, 2023, $113 billion of which represents retirement plan assets.

Principal has supported efforts to establish a robust and consistent best interest standard that applies to both retail and qualified plan investors, and to securities and annuities alike. Following the 5th Circuit's vacatur of the Department's 2016 fiduciary regulation, an enhanced and aligned federal-state consumer protection network was established through the Securities and Exchange Commission's ("SEC") Regulation Best Interest, the Department's Prohibited Transaction Exemption ("PTE") 2020-02, and the National Association of Insurance Commissioners' ("NAIC") model best interest regulation (now effective in 43 states and the District of Columbia). These comprehensive consumer protection standards require financial professionals to act in the best interest of their clients while preserving the ability of individual savers and plan fiduciaries to work with the financial professional of their choosing and to negotiate the method of payment for financial services and products.

Principal already adheres to applicable SEC Regulation Best Interest and state-level best interest standards. We have also spent considerable time and expense in building a compliance regime for select roles deliberately designed to provide advice in compliance with PTE 2020-02.

The Proposed Rule will disrupt the existing balanced consumer protection regime by seeking to broadly apply ERISA Title I fiduciary standards to virtually any suggestion by a financial institution and their representatives to engage in, or refrain from taking, a particular course of action involving an investment or investment strategy made to a plan fiduciary, plan participant, IRA fiduciary, IRA owner, or beneficiary thereof. Through the overly broad and sweeping definitional terms, the Proposed Rule will assign ERISA Title I fiduciary status not only to recommendations currently covered by existing, federal-state best interest standard regulations, but also to many traditional sales and education activities that should not be considered financial advice, let alone fiduciary investment advice.

As with prior regulatory efforts, the Department conflates the meaning of a best interest standard with that of the ERISA fiduciary "sole interest" standard and applies many of the same expansive concepts that led to the Fifth Circuit's vacatur of the 2016 regulation. By applying an overly expansive definition of fiduciary investment advice while further restricting exemptive relief by forcing all financial institutions and their representatives to utilize a more constrained and restrictive PTE 2020-02, the Department is once again inviting litigation that could result in an outcome like *Chamber of Commerce of the U.S. v. U.S. Dep't of Labor*[1].

Despite the Department's position, finalizing the Proposed Rule can only result in another round of wasteful expense and damaging impacts to retirement investors as firms are forced to adjust business models to an unworkable regulatory regime. The concerns are not theoretical. The Department's 2016 investment advice regulation was proof that applying fiduciary duties on persons engaged in traditional sales and marketing activities has damaging consequences, specifically to low- and moderate-income individuals and small employers.

- A 2017 Deloitte study[2] determined that more than 10 million American workers' accounts, with $900 billion (about $2,800 per person in the US) in savings, lost access to professional financial guidance following the Department's 2016 regulation.

- An additional study by the Hispanic Leadership Fund and Quantria Strategies[3] found the 2016 fiduciary regulation would have reduced the projected accumulated retirement savings of 2.7 million American workers with incomes below $100,000 by approximately $140 billion over 10 years; and leveled the most adverse effects on Blacks and Hispanics: reducing projected accumulated IRA savings by approximately 20% over 10 years and contributing to an approximately 20% increase in the wealth gap attributable to IRAs for these individuals.

With the retirement savings gap remaining a persistent challenge and concern, especially for lower-income and minority workers, American workers need more access to financial education and advice – not less. Congress has recognized the need for expanded access to workplace savings plans through the sequential SECURE Acts. The Proposed Rule is at odds with this work and will only serve to reduce access to needed financial education and advice.

We stand by the opinions expressed in the vast number of comment letters that echo our concerns outlined here. Rather than repeat arguments about the numerous ways that the Proposed Rule conflicts with the Fifth Circuit's decision, we direct the Department to the comment letters submitted by the American Council of Life Insurers, the Securities Industry and Financial Markets Association, the Investment Company Institute, the Insured Retirement Institute, and the Society of Professional Administrators and Recordkeepers for a detailed accounting of the illegality of core aspects of the Proposed Rule as it relates to the Court's ruling.

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[1] 885 F.3d 360 (5th Cir. 2018).
[2] *The DOL Fiduciary Rule: A study on how financial institutions have responded and the resulting impacts on retirement investors,* Study Conducted for SIFMA by Deloitte & Touche LLP, August 9, 2017
[3] *Analysis of the Effects of the 2016 Department of Labor Fiduciary Regulation on Retirement Savings and Estimate of the Effects of Reinstatement*, Hispanic Leadership Fund & Quantria Strategies, Nov 2021

Given the dramatic flaws in this regulatory proposal, we urge the Department to withdraw the Proposed Rule and allow the current federal-state best interest regime, which is still in its infancy, to work as designed. Below, we outline critical concerns regarding the negative consequences that the Proposed Rule could have on our retirement plan customers, their plan participants, and individual retail investors.

Changes to the 5-part test

By expanding the definition of fiduciary investment advice so broadly, the Proposed Rule will dramatically reduce access that plan fiduciaries, plan participants, and individual investors currently have to valuable information and education about investments, investment strategies (i.e., model portfolios and target date concepts to assist investors), and key considerations when seeking a withdrawal, distribution, or other options related to their retirement savings account.

Call Center Support for Plan Participants – Our call centers take thousands of calls per day from retirement plan participants, providing valuable information and education regarding basic investing concepts and details about the services and investments offered to them through their retirement plan. The information provided by our call center associates is essential in enabling and empowering participants to make effective decisions about a variety of aspects of their plan participation and retirement savings journey.

The Proposed Rule as drafted can be read to unnecessarily constrain our call center associates from providing education about specific plan investments, investment services (e.g., model portfolios), or advisory service options (e.g., managed account service), as such discussions could trigger fiduciary status under the proposal. Triggering fiduciary status would require our call center functions to be covered under PTE 2020-02, prohibitively increasing risks and costs related to this function to the extent that these discussions might need to be discontinued. Discontinuing such discussions can only lead to plan participants making less informed decisions with long-term negative consequences for their retirement security.

Consider the following:

- A participant calls the Principal call center to ask about options for investing their 401(k) contributions. After a discussion about basic investing principles, the participant indicates that they are still uncomfortable making the decisions on their own and asks the call center associate for additional help in understanding the investment options. Under the Proposed Rule, further assistance by the call center associate could trigger a fiduciary recommendation regardless of whether the participant ultimately elects an active or passive investment strategy (i.e., the participant is ultimately defaulted into the qualified default investment option chosen by their employer or the participant opts to elect the managed account advice offering offered by their employer) (*"a suggestion to take, or refrain from taking, a specific action"*).

- A participant calls the Principal call center in need of funds to pay off an overdue debt and inquiries about a hardship withdrawal. The call center associate explains the process for a hardship withdrawal but also informs the participant that their plan allows for a loan feature and explains the process by which the participant could borrow from their account (with a convenient, payroll-based loan repayment process), assuming they can afford the additional loan payments. Under the Proposed Rule this could be considered fiduciary advice.

Sales Activities and Requests for Proposals (RFPs) – As a plan service provider and investment manager, we are naturally engaged in selling our products and services to plan sponsors who are either seeking to establish a retirement plan for their employees for the first time or evaluating potential new providers for their existing plan. In most sales engagements, an intermediary financial professional and/or institution retained by the plan sponsor assists in evaluating service providers. Plan sponsors and their financial intermediaries are sophisticated by the very nature of their willingness to accept and carry out their fiduciary duties and obligations under ERISA and are provided robust disclosures about the products and services that they have selected for their plans.

Since the Proposed Rule has no seller's exception and no sophisticated investor or institutional sales tests, any suggestion of a specific investment or investment strategy to either the unaffiliated financial intermediary or to the plan sponsor appears to trigger fiduciary status, further confirming our concern about the unworkable breadth of the Proposed Rule.

Further, it is common for plan sponsors to issue RFPs to gather information from bidding service providers and investment managers to evaluate offerings and capabilities and narrow their options. By their very nature, RFPs are individualized to the plan and should not be potentially treated as investment advice activities because of this factor.

Consider the following common sales activities that could be considered fiduciary investment advice under the Proposed Rule:

- A plan sponsor states that their intent is to offer a target date investment alternative that continues to have some level of equities market exposure even after the target retirement date. A service provider wholesaler provides a list of available target date funds from the provider's platform that maintain certain levels of equity exposure post-retirement date.

- A financial intermediary representing a plan sponsor seeking quotes from potential service providers specifically requests annual out-of-pocket costs within a given range. The service provider wholesaler selects a sample representative investment lineup aligning with the plan's current lineup while using specific investment options to meet the out-of-pocket fee request.

- A financial intermediary issues an RFP seeking bids for investment management solutions for a specific investment sleeve within the plan's broader investment menu. An investment management wholesaler responds to the RFP by providing information on two investment options managed by the wholesaler's firm that meet the parameters laid out in the RFP.

- A service provider wholesaler meets with an independent investment advisor who provides 3(38) investment advice to a retirement plan sponsor. The wholesaler outlines how a model portfolio service could be beneficial in response to the investment advisor noting their plan sponsor client's concerns about the lack of customization of "off-the-shelf" target date funds.

- A defined benefit plan sponsor issues an RFP for actuarial services. The service provider representative provides information on the firm, their services, and detailed ideas on how certain strategies, such as liability-driven investing or de-risking, could be responsive to the challenges noted in the RFP by the plan fiduciary.

In the institutional markets, sophisticated investors, ERISA plan fiduciaries, registered investment advisers, and 3(21) and 3(38) fiduciary advisors look to counterparties for new ideas, new services, market intel, and pricing data. None of the above common sales activities should be considered fiduciary investment advice, nor would any plan sponsor reasonably consider them so today. Rather, the activities are an exercise in due diligence by plan fiduciaries, exploring options and new ideas that could be of value to their plan.

The Proposed Rule's potential application of fiduciary status to common sales activities not only introduces co-fiduciary liability for salespeople and firms who may not even secure the sought-after business (or earn a fee), but an entire supervision and disclosure regime would need to be established for plan service provider support roles requiring processes reasonably designed to comply with the parameters of PTE 2020-02. Such a new process cannot be facilitated without time for proper design, training, and significant resource allocation to execute, all of which would lead to some combination of increased costs and/or decreased services for plan sponsors and retirement investors.

Changes to PTE 2020-02

As we noted earlier in this letter, Principal was a supporter of the Department's efforts to establish PTE 2020-02. We believe the exemption is administrable and principles-based, while offering clear and targeted consumer protections. Since the exemption was finalized, we have spent significant time and resources restructuring specific roles in our organization that are authorized to provide covered advice while building out the necessary supervisory process and disclosure regime. Now, less than two years since the administrative transition period ended, the Department is proposing new and significant obligations for the exemption.

We strongly believe that the Proposed Rule neither asserts nor demonstrates that PTE 2020-02 in its current form is inadequate, and insufficient time has passed since its full effective date to make such a determination. Absent such evidence, it is unreasonable for the Department to compel firms who use it to yet again rebuild their compliance systems less than two years after the exemption took effect. Furthermore, and as detailed below, many of the proposed amendments are overly prescriptive, significantly challenging--if not impossible--to operationalize, or inconsistent with the Fifth Circuit's ruling in *Chamber of Commerce of the U.S. v. U.S. Dep't of Lab*. We urge the Department to remove the amendments from the Proposed Rule.

- *The written statement of the best interest standard is nearly indistinguishable from the prior rule's Best Interest Contract Exemption ("BICE")* – The Proposed Rule requires that Title II fiduciaries providing advice to IRA owners agree in writing that they are acting as a fiduciary and carrying out fiduciary duties and obligations, the "Impartial Conduct Standards," as a condition for exemptive relief under the Internal Revenue Code. This requirement establishes a de facto contractual obligation that would create a state law cause of action for IRAs that the Fifth Circuit ruled was beyond the Department's authority. Furthermore, the Fifth Circuit also rejected the Department's justification--which is no different now than in 2016--that the change is necessary due to changing market environment conditions. In response, the Fifth Circuit concluded that "A perceived need does not empower DOL to craft de facto statutory amendments or to act beyond its expressly defined authority."

- *Per transaction cost and compensation disclosures are inconsistent with other federal-state best interest requirements, unjustifiably costly, and simply unworkable* – The Proposed Rule requires that "a Retirement Investor has the right to obtain specific information regarding costs, fees, and compensation, described in dollar amounts, percentages, formulas, or other means reasonably designed to present full and fair disclosure that is materially accurate in scope, magnitude, and nature, with sufficient detail to permit the Retirement Investor to make an informed judgment about the costs of the transaction and about the significance and severity of the Conflicts of Interest, and that describes how the Retirement Investor can get the information free of charge." This information goes far beyond what the SEC already requires and will only increase confusion for the Retirement Investor while imposing unreasonable costs on the industry.

  While the Department believes the demand from Retirement Investors for this level of detail to be minimal, the immense costs of developing a system that could at any time provide such detail at a *per-transaction level* is simply not appreciated and woefully understated in the Department's cost analysis. Even with the enormous cost of attempting to establish such a system, we question whether such a system is even possible for anyone to fully implement. Furthermore, the new requirement would unrealistically necessitate a new mailing to every Retirement Investor within 60 days of the Final Rule being published in the Federal Register.

- *The IRA to IRA transfer comparison is impractical and unnecessary* – Unlike ERISA plans where public information is available and industry has spent considerable time and resources to connect third-party data sources to facilitate their rollover evaluations, such public data does not readily exist for IRAs. Retirement Investors already receive IRA product information through the Best Interest Obligations under the SEC's Regulation Best Interest and the NAIC's Best Interest model rule in advance of any recommendation. The Department has not demonstrated the need for or benefit of an additional disclosure that is largely duplicative of Form CRS.

- *The definition of Independent Producer under the proposed PTE 84-24 changes creates an unworkable scenario for insurers under PTE 2020-02* – Among the proposed changes to PTE 84-24, the exemption would be restricted to Independent Producers, defined as persons who are licensed to sell the annuity contracts of multiple insurers and who are not common law employees or statutory employees of an insurer. In some cases, PTE 2020-02 requires an insurer to supervise insurance agents who are either common law employees or statutory employees to ensure that every recommendation is in compliance with the exemption. However, it is common practice in the insurance industry for statutory employee agents to sell the annuities of multiple insurers. The Proposed Rule creates an unworkable scenario by requiring one insurer to supervise the sale of another's annuities under the revised PTE 2020-02.

- *The focus on differential compensation at the institution level is inconsistent with other federal-state requirements and unreasonable* – The proposed amendments require differential compensation to be mitigated at both the advisor level and the institution level. The existing PTE 2020-02 does not require differential compensation to be mitigated at the institution level, only at the advisor level. Nor does SEC's Regulation Best Interest require level compensation at the institution level. Compensation will never be level at the institution level and it is unreasonable to require it when the objective is to ensure that the advisor's compensation is not unduly influenced.

- *Expanding access to the Retrospective Review and requiring Financial Institutions to maintain public disclosure websites serves no beneficial purpose while driving up costs* - The Department is requesting comments on whether it should require Financial Institutions to maintain a public website containing the pre-transaction disclosure, a description of the Financial Institution's business model, associated Conflicts of Interest (including arrangements that provide Third-Party Payments), and a schedule of typical fees. Additionally, the Department is requesting comments on whether it should amend PTE 2020-02's recordkeeping provisions to allow plans, unions and employee organizations, and participants and beneficiaries to request records that would support reliance on the exemption.

  We strongly oppose both proposed amendments because they provide no meaningful value to Retirement Investors (who already receive disclosures of information relevant to their evaluation of an advice provider under the existing conditions of PTE 2020-02 and other required disclosures like 404(a)(5)). The public website described in the Proposed Rule would require constant upkeep and would be extremely costly to establish and maintain. The proposed expansion of access to the Retrospective Review would expose member transaction records to employee organizations who are not authorized to view those records. Access to the Retrospective Review should be limited only to the Department and the Internal Revenue Service.

- *The ineligibility provisions are arbitrary and capricious* – The existing PTE 2020-02 has a carefully constructed disqualification process. The proposed amendments depart from PTE 2020-02's reasonable approach, giving the Department sole authority to disqualify an entire financial institution from the advisory business for any felony conviction of any entity in any affiliated company occurring anywhere in the world, regardless of any harm or potential harm to plan investors. We strongly oppose this expansion of the ineligibility test and believe Congress never authorized the Department to have this degree of power.

- *Illogical application of PTE 2020-02 to sophisticated asset management relationships poses considerable industry challenges in implementation* – For example, if a service provider wholesaler makes a sales solicitation to an independent 3(38) fiduciary who is conducting broad due diligence, the infrastructure needed to build out a compliance and oversight process to mitigate against the potential fiduciary liability poses a significant burden for little evidenced benefit given the plan sponsor is already being advised by a 3(38) fiduciary.

Changes to PTE 84-24

The proposed changes to PTE 84-24 are overly burdensome and unnecessary for insurance companies and independent insurance agents (“Independent Producers”).

Fixed annuities are unique investments and unlike mutual funds and other investments, they can offer a retirement investor the security of a guaranteed stream of income throughout retirement. Because they are typically complex investments, independent agents are trained to properly educate retirement investors about the unique risks and benefits of a proposed annuity purchase. This level of training is deep, lengthy, requires substantial product understanding to complete, and is already required by existing laws.

Because of the considerable education and training, insurance companies seek to structure compensation in a way that equitably compensates effort against the applied time and training. As a result, insurers typically pay a sales commission for a sale, as well as other forms of compensation. Notwithstanding the level of effort involved in fixed annuity sales, the proposed changes to PTE 84-24 would unnecessarily restrict the types of compensation available to independent insurance agents.

The Department's definition of an Independent Producer introduces a significant burden of identification on insurance carriers. Specifically, insurers would need to obtain information regarding eligibility, identifying number of appointments, as well as identifying current and historic violations. Without a universally available solution allowing insurance companies transparent access to information, companies cannot fulfill the requirement.

There are existing disclosures required by state insurance regulations to ensure transparency of costs associated with the purchase of an annuity and the guarantees that an annuity may provide. Independent insurance agents must have knowledge of the documents to ensure retirement investors understand the product they are purchasing. Additional layers of disclosure as included in the proposed changes to PTE 84-24 would be unnecessary and may even impair investors' comprehension of the products by overwhelming them with disclosures.

The additional layer of compliance oversight structure under the proposed changes to PTE 84-24 in the proposal would be costly and redundant. Existing structure as required under state laws, including the NAIC Model Rule, effectively provides the oversight for all (both qualified and non) fixed and fixed indexed annuities. Imposing yet another level of supervisory oversight is unduly burdensome, without any demonstrated need by the Department. An additional--and different--structure imposed by the Department will result in increased costs and fewer options available to the retirement investor, effectively alienating those without the means to pay the additional costs of providing this additional level of supervision.

Finally, existing regulatory structures established by state laws governing the recommendations of annuities including the, NAIC Model Rule, adequately addresses sales activities of independent insurance agents to the retirement investor purchasing annuities. Imposing additional requirements on the use of PTE 84-24 is burdensome, costly, and redundant and does not accomplish the stated goal.

Effective Date

The Department has noted that the Proposed Rule, once finalized, would become effective 60 days after being published in the Federal Register. While we believe strongly that the Proposed Rule should be withdrawn, a 60-day timeframe is woefully inadequate, unrealistic, and far less than even the rushed 12-month implementation period offered in the 2016 fiduciary regulation. Holding to such a timeline would amplify the market disruption generated by the foundational elements of the Proposed Rule. Compliance with any final Rule will require further analysis and interpretation, contractual changes, role/function reviews and revised rules of engagement, compensation structure reviews, Retirement Investor communications, and establishment of new supervisory structures. The Department must provide sufficient time for industry to implement necessary changes without imposing significant disruption to business operations and to consumers' ability to access valuable products and assistance.

Principal appreciates this opportunity to provide comments. With approximately 12,000 people turning 65 each day beginning in 2024 according to U.S. Census Bureau figures, it's imperative that access to valuable financial assistance and advice is expanded, not restricted as will occur if the Proposed Rule is finalized. For the reasons outlined in this letter, we urge the Department to withdraw the Proposed Rule to prevent significant and irreparable harm to the retirement security of millions of Americans.

Sincerely,

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