

**Congress of the United States**  
Washington, DC 20510

February 11, 2015

The Honorable Thomas Perez  
Secretary  
Department of Labor  
Washington, DC 20002

The Honorable Shaun Donovan  
Director  
Office of Management and Budget  
Washington, DC 20201

Dear Secretary Perez and Director Donovan:

In April 2015, the Department of Labor (DOL) issued a proposed Conflict of Interest rule to ensure that retirement investment advisers act in the best interests of their clients. In response, many of the country's largest insurance and financial companies, in their official comments to the Department of Labor and in other public forums, opposed the proposed rule and predicted dire consequences if it was finalized.

However, new information obtained by our staff indicates that some of these same companies are providing very different assessments to their own investors, assuring them that the rule will have no significant impact on their companies. In contrast to their public doomsday predictions, industry leaders have told their own investors that they "don't see this as a significant hurdle,"<sup>1</sup> "will once again respond to marketplace or regulatory changes effectively,"<sup>2</sup> and that they are well-positioned to "adapt to any regulatory framework that emerges."<sup>3</sup>

Publicly traded companies are rarely held accountable for the assertions they make when lobbying in Washington, even if these assertions are untrue. But when communicating with investors, publicly traded companies are required by law to provide full and accurate information

---

<sup>1</sup> *Lincoln National's (LNC) CEO Dennis Glass on Q1 2015 Results—Earnings Call Transcript*, Seeking Alpha (May 2, 2015) (online at <http://seekingalpha.com/article/3131306-lincoln-nationals-lnc-ceo-dennis-glass-on-q1-2015-results-earnings-call-transcript?part=single>).

<sup>2</sup> *Lincoln's (LNC) CEO Dennis Glass on Q2 2015 Results—Earnings Call Transcript*, Seeking Alpha (July 30, 2015) (online at <http://seekingalpha.com/article/3378035-lincolns-lnc-ceo-dennis-glass-on-q2-2015-results-earnings-call-transcript?part=single>).

<sup>3</sup> *Prudential Financial (PRU) John R. Strangfeld on Q2 2015 Results—Earnings Call Transcript*, Seeking Alpha (Aug. 6, 2015) (online at <http://seekingalpha.com/article/3410836-prudential-financial-pru-john-robert-strangfeld-on-q2-2015-results-earnings-call-transcript?page=2>).

about any material matters that may affect their business models or stock valuations.<sup>4</sup> The information companies provide to their investors must represent their true and accurate assessments of the impact of the proposed rule or they would be in violation of federal securities law.

We are writing to provide you with this new information about the financial industry's more sanguine view of the Conflict of Interest rule and to urge you to quickly finalize this rule in order to protect Americans and their retirement savings.

### **Doomsday Predictions of Financial Firms**

On December 14, 2015, leaders at nine of the largest insurance companies in the country—including Jackson National Life Insurance Company, Lincoln National, Prudential Financial, and Transamerica Corporation—published an article entitled “Department of Labor: Don’t Make it Harder for Americans to Gain Guaranteed Income in Retirement.” They were critical of the proposed rule, warning of the “potentially devastating impact” it could have on “hardworking Americans” and claiming that it would “make it more challenging for low- and middle-income workers to purchase annuities” because it would “force many Americans ... to pay more for financial products.” They asserted that “it is difficult to overstate the detrimental impact” of the proposed rule on middle-class Americans.<sup>5</sup>

The same companies reiterated these negative predictions about the rule’s impact in the comment letters they submitted to DOL on the proposed rule. The proposals “are bad for investors and for America,” wrote Jackson National Life Insurance Company president James Sopha, and “it will be very difficult, if not impossible for financial professionals and firms to comply with the requirements.”<sup>6</sup> Dennis Glass, President and CEO of Lincoln National, called the rule “immensely burdensome” and “extremely intrusive” and claimed that its provisions would be “so burdensome and unworkable that financial advisors and firms will not be able to use it.”<sup>7</sup> Prudential Financial’s Executive Vice President and General Counsel, Susan Blount, criticized the rule’s recordkeeping and disclosure requirements, arguing that they posed a

---

<sup>4</sup> See S.E.C. Rule 10b-5, at 17 C.F.R. 240.10b-5 (online at [www.gpo.gov/fdsys/pkg/CFR-2015-title17-vol4/xml/CFR-2015-title17-vol4-sec240-10b-5.xml](http://www.gpo.gov/fdsys/pkg/CFR-2015-title17-vol4/xml/CFR-2015-title17-vol4-sec240-10b-5.xml)).

<sup>5</sup> Walter White, et al., *Department of Labor: Don’t Make It Harder for Americans to Gain Guaranteed Income in Retirement*, Morning Consult (Dec. 14, 2015) (online at <https://morningconsult.com/opinions/department-of-labor-dont-make-it-harder-for-americans-to-gain-guaranteed-income-in-retirement/>).

<sup>6</sup> Letter from James R. Sopha, President, Jackson National Life Insurance Company, to the Department of Labor (July 21, 2015) (online at [www.dol.gov/ebsa/pdf/1210-AB32-2-00688.pdf](http://www.dol.gov/ebsa/pdf/1210-AB32-2-00688.pdf)).

<sup>7</sup> Letter from Dennis R Glass, President and CEO, Lincoln Financial Group, to the Department of Labor (July 21, 2015) (online at <http://www.dol.gov/ebsa/pdf/1210-AB32-2-00643.pdf>).

“significant challenge,” could lead to “increased compliance costs,” and “will significantly increase” firms’ servicing expenses.<sup>8</sup> Finally, Kent Callahan, President and CEO of Transamerica’s Investment and Retirement Division, criticized the proposal’s “harmful impact” and called the design of the proposed conflict of interest standard “unworkable.”<sup>9</sup>

### **Statements to Investors**

In contrast to the doomsday predictions they make in Washington op-eds and comment letters to the Department of Labor about the Conflict of Interest rule, these companies are providing their investors with a much more sanguine view of the impact of the rule, explaining that it will have few, if any, negative impacts on their financial advisers, their clients, or their bottom line, and may even create new business opportunities.

#### ***Lincoln National***

In May 2015, the CEO of Lincoln National, Dennis Glass, told investors: “Lincoln, because of our scale, broad set of product offerings and strong and diverse distribution franchises with a proven ability to pivot in response to market or regulated changes will be able—will therefore be able to navigate through whatever comes down the road.” Despite calling the proposed rule “unworkable” in his comment letter to DOL, Glass told investors that “we don’t see this as a significant hurdle for continuing to grow that business.”<sup>10</sup>

Similarly, during an investor call in July 2015, Mr. Glass told investors that he is “confident we will once again respond to marketplace or regulatory changes effectively.”<sup>11</sup>

#### ***Prudential Financial***

In May 2015, Stephen Pelletier, the Executive Vice President and COO of Prudential Financial, explained to investors the potential impact of the proposed rule:

---

<sup>8</sup> Letter from Susan L. Blount, Executive Vice President and General Counsel, Prudential Financial, Inc., to the Department of Labor (July 21, 2015) (online at <http://www.dol.gov/ebsa/pdf/1210-AB32-2-00687.pdf>).

<sup>9</sup> Letter from Kent Callahan, President and CEO, Transamerica Investment and Retirement Division, to the Department of Labor (July 20, 2015) (online at <http://www.dol.gov/ebsa/pdf/1210-AB32-2-00583.pdf>).

<sup>10</sup> *Lincoln National’s (LNC) CEO Dennis Glass on Q1 2015 Results—Earnings Call Transcript*, Seeking Alpha (May 2, 2015) (online at <http://seekingalpha.com/article/3131306-lincoln-nationals-lnc-ceo-dennis-glass-on-q1-2015-results-earnings-call-transcript?part=single>).

<sup>11</sup> *Lincoln’s (LNC) CEO Dennis Glass on Q2 2015 Results—Earnings Call Transcript*, Seeking Alpha (July 30, 2015) (online at <http://seekingalpha.com/article/3378035-lincolns-lnc-ceo-dennis-glass-on-q2-2015-results-earnings-call-transcript?part=single>).

[A]ll the factors I just mentioned give us the basis for doing that work with our partners to achieve the very important goal of ensuring that their clients have continued access to high-quality retirement income options, very much including the guaranteed lifetime income that is really distinctive to the annuities industry, and that we'll be able to make these offerings available on terms that work for everybody.<sup>12</sup>

In August 2015, Mr. Pelletier, stated that Prudential's "market position, our mix of businesses, and the strength of our franchise will help us to adapt to any regulatory framework that emerges." Similarly, CEO of Prudential Financial John Strangfeld assured investors that officials at Prudential "remain confident that we will successfully navigate whatever the ultimate outcome may be."<sup>13</sup>

### ***Jackson National Life Insurance Company***

In March 2015, Mike Wells, the CEO of Jackson's parent company, Prudential U.K., assured investors that the company was "better situated than any of our competitors to address" changes from the potential rule "quickly and effectively."<sup>14</sup>

In August 2015, Mr. Wells promised investors that Prudential would "come out on the other side, advantaged again." Although Jackson's comment letter to DOL said that it would be "very difficult, if not impossible" for companies to comply with the proposed rule, Mr. Wells cited a previous instance in which a "material change in the retirement market of the UK" led to an increase in retail sales, and argued that Prudential and Jackson "like minor disruptions in markets." Mr. Wells stated that his company, adjusting to a final rule, would "build whatever product is appropriate under that set and adapt faster and more effectively than competitors."<sup>15</sup>

### ***Transamerica Corporation***

---

<sup>12</sup> *Prudential Financial (PRU) John R. Strangfeld on Q1 2015 Results—Earnings Call Transcript*, Seeking Alpha (May 7, 2015) (online at <http://seekingalpha.com/article/3156536-prudential-financial-pru-john-r-strangfeld-on-q1-2015-results-earnings-call-transcript?part=single>).

<sup>13</sup> *Prudential Financial (PRU) John R. Strangfeld on Q2 2015 Results—Earnings Call Transcript*, Seeking Alpha (Aug. 6, 2015) (online at <http://seekingalpha.com/article/3410836-prudential-financial-pru-john-robert-strangfeld-on-q2-2015-results-earnings-call-transcript?page=2>).

<sup>14</sup> *Prudential's (PUK) CEO Tidjane Thiam on Full Year 2014 Results—Earnings Call Transcript* (Mar. 10, 2015) (online at <http://seekingalpha.com/article/2989986-prudentials-puk-ceo-tidjane-thiam-on-full-year-2014-results-earnings-call-transcript?part=single>).

<sup>15</sup> *Prudential's (PUK) CEO Mike Wells on Q2 2015 Results—Earnings Call Transcript* (Aug. 11, 2015) (online at <http://seekingalpha.com/article/3430866-prudentials-puk-ceo-mike-wells-on-q2-2015-results-earnings-call-transcript?part=single>).

In August 2015, Alex Wynaendts, the CEO of Transamerica's parent company, Aegon N.V., told investors that the company has a "track record of being able to adjust" in order to deal with the proposed rule. Although Transamerica called the proposed rule "unworkable" in its comment letter to DOL, Wynaendts told investors that "we've shown ... flexibility and we expect to be able, with that flexibility, [to] remain very strongly positioned in a market that is providing products that millions of customers in the U.S. continue to need."<sup>16</sup>

### Conclusion

Contrary to their dire and unsupported public predictions and official comments to the Department of Labor about the impact of the proposed Conflict of Interest rule, insurers and financial firms provide much more optimistic assessments when they speak to their own investors and are required by law to provide accurate reports of material information. As you work to finalize the rule, we hope that you will make careful note of these statements.

The Council of Economic Advisers estimates that financial adviser conflicts of interest like those targeted by the proposed rule currently cost American families \$17 billion annually in lost retirement savings.<sup>17</sup> The American people deserve access to the best financial advice possible from their retirement advisors—free from any conflicts of interest—and we urge you to finalize the rule as quickly as possible.

Sincerely,



Elijah E. Cummings  
Ranking Member  
Committee on Oversight and  
Government Reform  
U.S. House of Representatives



Elizabeth Warren  
Ranking Member  
Subcommittee on Economic Policy  
Committee on Banking, Housing, and Urban  
Affairs  
U.S. Senate

---

<sup>16</sup> *Edited Transcript: AGN.AS – Q2 2015 Aegon NV Earnings Call*, Thomson Reuters (Aug. 13, 2015).

<sup>17</sup> Council of Economic Advisors, *The Effects of Conflicted Investment Advice on Retirement Savings* (February 2015) (online at [www.whitehouse.gov/sites/default/files/docs/cea\\_coi\\_report\\_final.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_coi_report_final.pdf)).