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Submitted Electronically

Mr. Brent J. Fields
Secretary
U. S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

**Re: Supplemental Comments of Lincoln Financial Group on
Proposed Regulation Best Interest; File Number S7-07-18**

Dear Mr. Fields:

Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates (collectively, "Lincoln"). On August 7, 2018, Lincoln submitted a letter in response to the public request by the staff of the Securities and Exchange Commission (the "Commission") for comment on proposed Regulation Best Interest. On September 25, 2018, representatives of Lincoln met with staff from the Division of Trading and Markets and the Division of Investment Management to provide additional information and feedback on this proposed regulation. Following that meeting, Lincoln is submitting this supplemental comment letter.

Best Interest Analysis Requires a Customer "Income Profile"

To meet a heightened best interest standard of care, broker-dealers must be required to take into consideration the entire financial life cycle of their retail customers, including saving and investing (accumulation) as well as retirement income needs (decumulation). This is important because, for many Main Street investors including millions of retirees and individuals nearing retirement, the paramount concern is ensuring they do not outlive their savings. Despite this concern, neither current FINRA rules nor proposed Regulation Best Interest require broker-dealers to analyze a customer's retirement income needs when developing an "investment profile" and making recommendations.¹ Instead, current rules and proposed Regulation Best

¹ Proposed Regulation Best Interest defines "retail customer investment profile" as including, without limitation, "the retail customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the retail customer may disclose ... in connection with a recommendation." Regulation Best Interest Proposing Release, 83 Fed. Reg. 90 (May 9, 2018), at 21682. FINRA Rule 2111(a) defines the customer's "investment profile" in identical terms.

Interest are only focused on the accumulation phase of an investor's life. As a result, a significant regulatory gap remains. The Commission must close this gap in the final version of Regulation Best Interest by requiring broker-dealers to obtain and analyze information constituting a customer's "income profile," in addition to the information already required to develop the "investment profile," at the outset of the customer relationship.

A customer's "income profile" may be comprised of information such as income objective in retirement, time horizon until drawing income, risk tolerance for fluctuations or decreases in retirement income, other sources of guaranteed and non-guaranteed income, and whether the customer wants to secure income for a spouse or partner. Only with this income-related information can broker-dealers make recommendations that are in the best interest of their customers when one of their primary goals is securing adequate income throughout retirement.²

In addition, broker-dealers must be required to develop a customer's income profile in addition to her investment profile at the *outset of the customer relationship* before making any recommendations. Currently, under FINRA Rule 2330(b), when recommending a deferred variable annuity, broker-dealers are required to make reasonable efforts to obtain several categories of information in addition to what is required under Rule 2111(a).³ While FINRA Rule 2230(b) requires a more detailed view of a customer's profile, it does not specifically require broker-dealers to obtain information regarding a customer's retirement income needs. Moreover, FINRA Rule 2230(b) applies *only after* a broker-dealer has already decided to recommend a variable annuity to a customer. A customer's retirement income needs must be a part of the best interest analysis, and the time for considering the necessary customer information is up front, not after a product has already been selected.

A requirement that broker-dealers develop a customer "income profile" in addition to the "investment profile" at the outset of the customer relationship would meaningfully raise the standard of care. Such a change in the final version of Regulation Best Interest would also respond to the concerns of many commenters who foresee a looming retirement crisis in our country.⁴

² Lincoln believes that the fiduciary duty owed by investment advisers to their clients under the Investment Advisers Act should also be clarified to explicitly require investment advisers to prepare and analyze a client's "income profile" when providing advice in the context of an investment advisory relationship.

³ The additional categories of information that broker-dealers must make reasonable efforts to obtain under FINRA Rule 2230(b) include annual income, intended use of the deferred variable annuity, existing assets (including investment and life insurance holdings), and liquid net worth. See FINRA Rule 2230(b). FINRA Rule 2230(b) also requires broker-dealers to make additional disclosures. *Id.*

⁴ Commissioner Kara Stein recently commented that: "The retirement crisis is a tsunami that is rapidly approaching. We can see it and, indeed, we are starting to see its effects. Americans are having to work past traditional retirement age. And the number of bankruptcies for those over the age of 65

Required Disclosures Should Include Benefits in Addition to Costs of Recommended Products

The Disclosure Obligation under proposed Regulation Best Interest, and the requirements under proposed Form CRS, are focused on costs and fees, material conflicts of interest, and the duties owed in a broker-dealer advice relationship.⁵ What is missing is a requirement that broker-dealers disclose to their customers critical information regarding the products they offer and/or recommend, including the associated benefits they would receive, in exchange for the costs and fees. Disclosure of costs alone is only part of the equation. Customers need to know what they are receiving in exchange for the costs so they can weigh the costs with the benefits, which will lead to more informed investment decisions.⁶

The need for disclosures regarding product features and their associated benefits is particularly important where a variable annuity contract with guaranteed lifetime income or other guaranteed benefits may be in a retail customer's best interest.⁷ Unlike other products like mutual funds and ETFs, a variable annuity is an individual contract between an insurance

has increased dramatically. The size and speed of the tsunami is likely to increase as it gets closer to us." Speech of Commissioner Kara Stein at the Brookings Institution, Washington, DC, October 16, 2018. Commissioner Stein suggested that the President issue an executive order to create a Presidential Working Group on Retirement Security consisting of regulators from the Departments of Labor, Treasury, Commerce and the SEC, as well as from private sector firms, to enhance the state of retirement security in the United States by making recommendations regarding legislative, regulatory, or other changes. *Id.*

⁵ The Disclosure Obligation under proposed Regulation Best Interest would require a broker-dealer or a natural person associated with a broker-dealer "to, prior to or at the time of [a] recommendation, reasonably disclose to the retail customer, in writing, the material facts relating to the scope and terms of the relationship with the retail customer and all material conflicts of interest associated with the recommendation." Regulation Best Interest Proposing Release, at 21599. Examples of "material facts relating to the scope and terms of the relationship with the retail customer" are (i) that the broker-dealer is acting in a broker-dealer capacity; (ii) fees and charges that apply to the retail customer's transactions, holdings, and accounts; and (iii) type and scope of services provided by the broker-dealer, including, for example, monitoring the performance of the retail customer's account. *Id.* Similarly, the disclosures required under proposed Form CRS are focused on services, fees and conflicts of interest (as well as the disciplinary history of broker-dealers and registered representatives). Form CRS Proposing Release, 83 Fed. Reg. 90 (May 9, 2018), at 21416, 21419.

⁶ In addition, disclosures relating to costs must be made in a way that is accurate, complete and easily understandable. When retail customers are subject to different costs on the same investment - for example, expense ratios on mutual funds in addition to fee-based compensation for advice - the disclosure should identify all the costs in one place so that the "all in" cost to the customer is readily available.

⁷ Unlike typical mutual funds and ETFs, when an investor purchases a variable annuity on a commission basis, the commission is not deducted from the invested assets, so 100% of the invested assets go to work for the contract owner on day one.

company and a customer that provides investment flexibility and various options for protection throughout an investor's life, including:

- Lifetime Income Guarantees: A known, guaranteed source of income for life;
- Death Benefit Protection: Death benefit payable to a beneficiary upon death;
- Long-Term Care Protection: Benefit payments up to two times the original investment for long-term care; and
- Nursing Home Protection: Access to account balance without fees for nursing home care.

In many cases, particularly for customers seeking to secure lifetime income, cost is only one of the important factors to consider. Disclosure of costs alone would be incomplete, confusing and likely to result in a bias toward low-cost products even if such products are not in a customer's best interest.

Similarly, when recommending that a customer sell or redeem a product, such as a variable annuity with guaranteed lifetime income, firms must be required to disclose the benefits and guarantees that the customer would give up by following the recommendation. Some firms go to great lengths – including through advertisements on television and the internet and through “buy-out programs” that offer to pay annuity surrender charges – to induce retail customers to redeem their annuity contracts and move the proceeds to a fee-based account that would pay the firm an asset-based fee, year after year, to invest in mutual funds or ETFs. Before recommending that retail customers give up products such as variable annuity contracts, firms should be required to disclose the benefits that the customer would lose (such as guaranteed lifetime income protected from market volatility), in addition to the features, risks and costs of the proposed new investment.

For the above reasons, both the Disclosure Obligation in proposed Regulation Best Interest and the disclosures in proposed Form CRS must be modified to require disclosure of important information regarding products and their benefits in addition to the applicable costs.

Proposed Form CRS Does Not Take into Consideration Variable Annuities

As set forth above, proposed Form CRS must require disclosures relating to product features and benefits in addition to costs.⁸ In addition, it is evident that the proposed form was not designed with variable annuities in mind given that it only contemplates customers purchasing

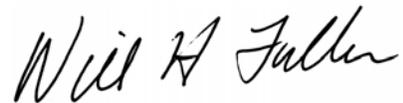
⁸ One solution is to include in Form CRS a column or section for the disclosure of information regarding product categories and associated benefits (and, potentially, risks) that is right next to the disclosures regarding costs and fees.

securities in traditional brokerage accounts. Sales of variable annuities, and variable life insurance products, typically do not involve the opening of a brokerage account and are not conducted in a brokerage account. Instead, following a recommendation, a broker-dealer takes an application and sends it to a life insurer, which then issues a contract or policy directly to the customer.⁹ Similarly, proposed Form CRS appears to be designed only with full-service broker-dealers in mind, and does not contemplate smaller firms or introducing broker-dealers that may conduct a significant amount of business in variable insurance products.

For Form CRS to have a positive impact for investors who may invest in variable insurance products, the final Form CRS must include disclosures relating to product features and benefits and must adequately account for the way variable insurance products are typically purchased by retail customers.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Will H. Fuller". The signature is written in a cursive, flowing style.

Will H. Fuller
President, Lincoln Financial Group Annuity Solutions,
Lincoln Financial Distributors and Lincoln Financial Network

⁹ In addition, the assets supporting the contracts and policies are held at the insurance companies rather than at a broker-dealer.