IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

FREDERICK ROZO, Plaintiff, vs. PRINCIPAL LIFE INSURANCE COMPANY, Defendant.	No. 4:14-cv-00463-JAJ **OPINION AND ORDER ON THE MERITS FOLLOWING BENCH TRIAL**

This matter comes before the court pursuant to trial on the merits of claims of breach of fiduciary duties imposed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq*. Following a six-day trial to the court, the court reserved ruling on the matter pending receipt of proposed findings of fact and conclusions of law. Those have now been received, and the matter is ready for disposition.

I. FACTUAL CONTEXT

In this section of the opinion, the court will focus on the factual context of this litigation. First, the court will make findings on "framework" facts, that is, facts that put in context the parties' specific disputes about whether or not the defendant breached its ERISA fiduciary duties, including who the parties are and how the insurance product at issue worked. Second, the court will make findings on the process for setting the participants' rate of return on the product at issue, because the rate of return is a central issue in this case. In its legal analysis, the court will make specific findings on various matters that the plaintiff contends demonstrate that the defendant breached its fiduciary duties in setting the rate of return for participants on the insurance product at issue.

A. "Framework" Facts

1. The parties and the dispute

Plaintiff Frederick Rozo, a California resident, was employed by the Western Exterminator Company and was a participant in the Western Exterminator Company Employees' 401(k) Profit Sharing Plan (the WEC Plan), a retirement plan, during part of the class period, which is from November 2008 to the present. Defendant Principal Life Insurance Company is an insurance company that is headquartered in Des Moines, Iowa. It is regulated by the Iowa Insurance Division and qualified to do business in Iowa. Principal offers products and services to 401(k) plans. One of Principal's products, the Principal Fixed Income Option (PFIO) is at issue in this case.

Rozo and the class he represents purchased the PFIO, which was available for inclusion in their 401(k) pension plans sponsored by their employers. Rozo contends that Principal breached its ERISA fiduciary duties when it targeted and received an unreasonable profit, *i.e.*, excessive compensation, for offering and managing the PFIO, which reduced the interest rate paid to participants. Principal contends that it used sound actuarial processes to determine the interest rate to be paid to participants, that it offered the product at a competitively reasonable interest rate, that its profit or compensation was reasonable, and that Rozo's criticism of product expenses and profit combine in such a way that, if those criticisms were followed, Principal would be required to sell a moderate risk product to generate an interest rate for participants that is ordinarily associated with higher risk investments.

2. 401(k) plans and the PFIO

In a 401(k) plan, such as the WEC Plan, the plan sponsor, which is typically the employer, assembles a menu of investment options and products to make available to plan participants. The options on the plan menu, from the perspective of the participants, typically include an array of risk options. Higher risk options can potentially generate higher returns for participants, while lower-risk options yield lower returns. Each participant has an individual account to which the participant and/or the plan sponsor contributes money, and each participant chooses options from the plan menu and decides how much money to allocate to each of those options. Plan sponsors typically retain a third-party service provider to provide administrative services to their 401(k) plans, including services relating to plan recordkeeping, participant communications, participant education, and regulatory filings. Many insurance companies, including Principal, offer such administrative services. Principal provided administrative services to the WEC Plan.

Rozo allocated some of his money in the WEC Plan to the PFIO. The PFIO is a guaranteed return insurance product that Principal offers only to 401(k) plans that contract for administrative services from Principal. Plans are not required to offer the PFIO in order to receive administrative services from Principal, however. The PFIO is guaranteed to preserve the capital that participants allocate to it and to yield returns to participants at a fixed rate. Because Principal guarantees benefits at a fixed rate of return, Principal bears all the financial risk associated with offering the PFIO, while from the participants' perspective, the PFIO is a virtually no-risk product. The PFIO is attractive to plan participants, because it is a safe, stable product that preserves their capital and earns predictable returns, even though the rate of return is usually lower than other investment options available in their plans. Moreover, because the PFIO is a pooled insurance product, it was able to guarantee a much higher rate of return than other low-risk options available to participants in their plans, such as money market funds. Principal has never failed to make the payments promised to PFIO participants.

3. Structure of the PFIO

Principal offered the PFIO to 401(k) plans through a group annuity contract known as the PFIO contract, or the CGF01 contract. The PFIO contract and its related schedules govern the terms on which Principal offers the PFIO. For any given plan, the total amount of plan assets deposited into the PFIO may not exceed $75 million. Most of the plans for which Principal provides services have approximately $1 million in plan assets, so this $75 million limit is seldom relevant. Nevertheless, the limit protects participants by preventing the volatility that could be caused when larger plans make large deposits into or withdrawals from the PFIO.

The PFIO is structured as a series of underlying funds known as Guaranteed Interest Funds (GIFs). Each GIF has a life of 10 years and accepts deposits for only the first six months after it is opened. When Principal opens a new GIF, it sets a new Guaranteed Interest Rate (GIR) for the GIF. Each GIR is fixed for the 10-year life of its corresponding GIF—that is, each GIR applies to all funds remaining in its corresponding GIF during the 10-year period. Every six months, a portion of the money allocated to each GIF rolls over to the newest GIF in accordance with a roll-forward schedule (by percentage of assets) set forth in the PFIO schedules. Principal cannot make any adjustments to the roll-forward schedule for a GIF after the schedule is set and issued. The GIFs and roll-forwards are rate-setting and accounting devices used by Principal; there is no actual segregation of assets into separate accounts or movement of money between accounts.

Although Principal could choose to set up any type of maturity structure for the PFIO, so that the GIFs could remain in existence for less than 10 years, all the schedules during the class period provided for a 10-year roll-forward schedule. Similarly, although Principal had complete discretion to set the amount or percentage of a GIF to be rolled forward every 6 months after that GIF's 6-month deposit period, with the exception of one schedule in 2019, all of the schedules during the class period were nearly identical in that they rolled forward approximately 5% of the balance of each GIF in each period. Thus, every six months, the oldest GIF underlying the PFIO matures when the last funds in that GIF roll forward. This means that there are 20 GIFs underlying the PFIO at any given time.

4. Setting the CCR

The fixed rate of return that participants are guaranteed to receive from the PFIO is called the Composite Crediting Rate (CCR). Principal calculates the CCR every six months using a formula set forth in the PFIO contract and its related schedules. Somewhat more specifically, Principal calculates the CCR every six months by taking the weighted average of the GIRs for each of the 20 GIFs underlying the PFIO during the upcoming six-month period. Each CCR is then fixed for six months after it goes into effect. Thus, each time Principal calculates a new CCR, 19 of the 20 GIRs that go into the formula are rates that were set in the past and remain fixed, and the only GIR that Principal sets at that time is the one that applies to the newest GIF. Because of this formula and the roll-forward feature of the PFIO, the CCR changes slowly and remains relatively constant from one six-month period to the next. During the class period, the CCR has ranged from 1.10% to 3.50%. Principal sets each new CCR approximately 45 days in advance of the rate's effective date, which is either January 1 or July 1 of each year. Principal notifies plan sponsors of each new CCR approximately 30 days in advance of the rate's effective date. In turn, plan sponsors inform plan participants of the upcoming CCR. Principal also publishes the upcoming rate on a participant-facing website.

Participants who do not like the CCR can reject the rate by immediately withdrawing their funds from the PFIO at any time and at no cost. However, an "Equity Wash" provision in the Contract, to which Principal strictly adheres, limits participants' ability to make transfers from the PFIO to a "Competing Plan Investment Option" for a period of 90 days. During that 90-day period, the participant's monies must be transferred to a non-competing option. The Contract defines "Competing Plan Investment Option" as "either another guaranteed benefit policy similar to this Contract or a fixed income, money market, or bond fund, which has little, if any, market volatility," and provides that each Schedule will "list[] or describe[] more fully" the "Competing Plan Investment Options."

A plan sponsor who does not like the CCR, or who otherwise wishes to stop offering the PFIO to its participants, can withdraw all its participants' funds from the PFIO in one of two ways. First, it can withdraw from the PFIO at no cost after giving 12 months' notice to Principal (the 12-month put). In the alternative, it can withdraw from the PFIO immediately, without notice, by paying a charge equal to 5% of the plan assets allocated to the PFIO.

The evidence at trial demonstrated that these restrictions on participants' reinvestment options upon withdrawal from the PFIO and on plan sponsors' withdrawals from the PFIO benefit participants by reducing the risk of large, sudden cash outflows from the PFIO. The evidence also demonstrated that, without these restrictions, Principal could not offer a pooled guaranteed product with a rate as high and as stable as the PFIO.

5. General account backing

The PFIO's guarantees are backed by the assets in Principal's general account. Principal's general account consists of commingled assets that together support all Principal's liabilities, including all its contractual obligations to policyholders and beneficiaries for guaranteed benefit payments. Principal invests its general account assets in a highly diversified range of financial instruments, including fixed income instruments and bonds. The management of assets in Principal's general account is regulated by the Iowa Insurance Division, which imposes requirements set forth by the National Association of Insurance Commissioners (NAIC). The court will return to the regulation of Principal's general account by the Iowa Insurance Division and the NAIC, below.

When participants allocate funds to the PFIO, Principal uses those funds to purchase assets to be held in its general account, but no specific assets in the general account are tied to the PFIO or to any other specific product. Nevertheless, Principal uses "segments" of the general account to administratively track certain liabilities. One segment in Principal's general account, known as "Segment 130," tracks liabilities that correspond to multiple guaranteed products that Principal offers, including Full Service Accumulation (FSA) products, Full Service Payout (FSP) products, and Investment Only (IO) products. The PFIO is one of Principal's many FSA products. Because the PFIO's guarantees are backed by Principal's entire general account, Principal is able to offer participants significantly higher guaranteed rates than if the PFIO's guarantees were backed only by the funds that participants contribute to the PFIO.

Principal closed the PFIO to new plans around 2009 and, around that time, it opened a new general account product, the Principal Fixed Income Guaranteed Option (PFIGO).

6. Regulation of insurance products such as the PFIO

As mentioned above, the PFIO is an insurance product. This is not disputed. As such, it is regulated by the Iowa Insurance Division and the NAIC. As with all insurance products, Principal commits to paying policyholders (including PFIO participants) a guaranteed amount, and Principal takes the risk that its earnings will fall short of what it must pay. Participants, on the other hand, take virtually no risk: they are paid a guaranteed amount no matter how much income Principal's assets earn or fail to earn. The only risk that participants face is the extremely remote risk that Principal will become insolvent.

To guard against this remote risk, the Iowa Division of Insurance and the NAIC require insurance companies to set aside their own capital to back all the risks that insurance companies take. This capital is known as "Risk Based Capital" (RBC). RBC is a measure of the minimum amount of capital an insurance company must hold in order to support its overall business operations, given its size and risk profile. The NAIC annually publishes a voluminous set of instructions and worksheets for insurance companies to use to compute how much RBC they must retain, based on analysis of the riskiness to the insurer of every product that the insurance company offers. Under the NAIC instructions, products are rated depending on their features as low-risk, medium-risk, and high-risk, from the perspective of the insurance company. Because the PFIO has a 5% surrender charge, the NAIC Instructions classify it as a medium-risk product for Principal. Plaintiff's expert, Dr. Kopcke, claimed that the PFIO is, in reality, a low-risk product for Principal, and he calculated certain "deducts" accordingly. The court will explain "deducts," below.

No insurance company holds merely the minimum amount of RBC, because doing so potentially could trigger regulatory actions by state insurance commissions. Instead, insurance companies hold multiples of their minimum RBC. In addition, credit rating agencies require insurance companies to hold multiples of their minimum RBC in order to maintain high strength ratings. High ratings from credit rating agencies reflect confidence in the ability of an insurance company to meet its commitments going forward, including its long-term commitments. Poor ratings harm insurance companies financially and in turn disadvantage their policyholders and customers. On the other hand, insurance companies (including Principal) often look for ways to reduce their total RBC and prefer to hold less RBC, because their capital generally can yield a higher rate of return if put to use elsewhere.

Principal determines how much RBC it must hold by compiling information from more than two dozen actuaries and financial analysts and using a computer program to apply the NAIC Instructions to that information. Principal's RBC computation is then documented in an annual filing with the Iowa Insurance Division and the NAIC. Principal's Chief Actuary and Appointed Actuary must sign off on this annual filing. The Iowa Insurance Division reviews the annual filing and can audit Principal's RBC computation at any time.

Insurance companies must earn a return on the RBC they are required to set aside, because an insurance company's investors provide capital only if they are likely to obtain a competitive return. Therefore, Principal tries to earn a reasonable return on the RBC that regulators and rating agencies require Principal to set aside. In general, companies in the insurance and financial industry target—and their investors expect—post-tax returns of 12% to 25% on their capital. For part of the class period, Principal sought to earn a return of 15% on the additional capital—*i.e.,* a 15% return on capital (ROC), sometimes used at trial interchangeably with return on equity (ROE)—that Principal was required to maintain to back the PFIO. Later in the class period, Principal increased the targeted return on this additional capital from 15% to 20%. The 15% to 20% targeted return applied solely to that additional funds that Principal set aside to back the PFIO, not to the $1 billion in the PFIO from participant's allocations of monies to the PFIO. In fact, Principal's actual return on the capital backing the PFIO was approximately 5% to 16% during the class period.

B. Setting The GIR

A central issue in this case is how Principal sets the GIR for each GIF, because doing so determines the CCR for participants in the PFIO as well as Principal's profit or compensation for offering the PFIO. The court will discuss the procedure to calculate the GIR, then discuss the calculation of specific "deducts" that determine the GIR.

1. The procedure

As Rozo contends, Principal refers to the PFIO as a "spread-based product." Principal makes money by investing the assets in its general account and retaining the difference (the "spread" or "margin") between the return on those investments and the guaranteed interest rate credited to participants. Principal must assess its expected future risks and costs in making the guarantees in the PFIO, as Principal does with the many other insurance products that it offers.

Principal calculates the GIR for each new GIF using the formula ***A* – *B***, where ***A*** is the rate of return that Principal expects to earn on assets (*i.e.*, the "gross expected yield"), and ***B*** represents the sum of certain "deducts." ***A*** is determined by constructing a "gross yield curve" from (a) a swap curve[1] based on a live daily Bloomberg feed and (b) an

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[1] Rozo's expert, Dr. Kopcke, explained a "swap curve" as follows:

> [I]t's a contract between two parties where one party agrees to pay a floating interest rate in return for the other party's paying a fixed interest rate. They're very common in financial markets. They have different maturities, so the agreement may last 1 year, 2 years, 5 years, as long as you want, out to 30 often. The swap rate or swap curve is a display of the fixed rates on each of these swaps just like a bond rate curve would be at 1-year, 2-year, 3-year, 4-year, 5-year, so forth maturities, so it's a depiction of the various fixed rates that parties are willing to pay for contracts of different durations.

Tr. 430:8-18.

assumed asset spread based on available indices or market clearing spreads for various asset classes. ***B*** is the sum of the deducts applicable to the PFIO, which are intended to reflect Principal's predictions about certain future costs and risks that it undertakes in connection with offering the PFIO. Principal uses these deducts to calculate the GIR not just for the PFIO, but also to calculate similar guaranteed rates for its other guaranteed FSA products.

Principal determines ***B*** in the formula above through a rigorous process that includes extensive analysis and evaluation conducted by Principal's actuaries. Actuaries undergo extensive training to perform their work and must pass numerous standardized exams over a multi-year period to become licensed to practice. Once licensed, actuaries must perform their work in accordance with the Actuarial Standards of Practice (ASOPs), which are detailed guidelines about how to estimate and quantify actuarial risk. Actuaries employ actuarial science, which applies mathematical and statistical methods to estimate future costs and risks based on assumptions and judgments about those future costs and risks.

More specifically, as part of this process, Principal held monthly Segment 130 Pricing meetings to review, discuss, and approve many deducts for the PFIO and other Principal guaranteed products. As many as 20 attendees came to each Segment 130 Pricing meeting, including the Chief Actuary of Retirement and Income Solutions (RIS), the head of the GIC Team (another actuary), members of the GIC Team, and representatives from Principal Global Investors (PGI), among others. The GIC Team was responsible for pricing Principal's guaranteed products. It calculated the GIRs for the PFIO using the deducts that were discussed and approved at the monthly Segment 130 pricing meetings. The GIC Team consisted of actuaries, as well as financial analysts supervised by the actuaries. Nothing about the number or qualifications of participants in this endeavor guaranteed that its result would be fair and reasonable. But the evidence showed that these highly skilled individuals worked to analyze risk fairly to produce an attractive, competitive product.

The rate-setting process for the PFIO began approximately 52 days before each new CCR went into effect. Each time it started with a financial analyst on the GIC Team compiling data under supervision of an actuary to calculate a recommended GIR and CCR. The process included the following steps: (a) computing the gross expected yield based on updated swap rates and asset spreads, (b) gathering information about the deducts already approved at the Segment 130 Pricing meetings, (c) calculating a recommended GIR by subtracting the total deducts from the gross expected yield, and (d) calculating a recommended CCR based on the formula set forth in the PFIO contract. These calculations of the recommended GIRs and CCRs every six months were documented in extensive Excel spreadsheets containing substantial amounts of data.

The next step in the process, which occurred approximately 45 days before each CCR went into effect, was the PFIO Rate Reset meeting, at which the recommended GIR and CCR and their underlying calculations were reviewed, discussed, and approved. A financial analyst, who prepared the recommendations, and several Principal actuaries attended the PFIO Rate Reset meetings. The actuaries who attended the PFIO Rate Reset meetings included the Chief Actuary of RIS and the head of the GIC Team, both of whom were responsible for deciding whether to approve the deducts that were proposed and discussed. The PFIO Rate Reset meetings were also usually attended by the head of Principal's Product Area, Aaron Friedman, whose role was to provide information on competitor products and other relevant market commentary.

2. The "deducts"

Again, "deducts" from the GIR are intended to reflect Principal's predictions about certain future costs and risks that it undertakes in connection with offering the PFIO. Deducts are expressed in basis points (bps), where 100 bps is 1%. Fourteen deducts were used to determine the GIR for the PFIO; Rozo contends that 9 of the 14 deducts were excessive. There is—and can be—no dispute that the higher the deducts, the lower the rate of return paid to participants will be. With some exceptions, the higher the deducts, the higher Principal's revenue from the PFIO will be. The exceptions are deducts that are "pass-throughs," that is, Principal credits them to plans to defray their administrative service fees. Such "pass-through" deducts benefit participants because participants typically bear the cost of the administrative fees of the service provider.

The court turns to findings concerning the deducts used to determine the GIRs for the PFIO.

a. Unchallenged deducts

Rozo does not challenge five deducts. Although they are not challenged, the court will discuss each of these deducts, at least briefly, because they are relevant to the deducts that Rozo challenges.

i. Credit Loss

The Credit Loss deduct attempts to account for the future credit losses (*i.e.*, defaults on the assets Principal owns) that Principal expects its general account to experience over the long term in connection with the types of assets that back the PFIO liabilities. Principal computed the Credit Loss deduct by determining an expected credit loss amount for each type of asset it planned to purchase, and taking the weighted average of the expected credit losses for the projected allocations of asset classes it planned to purchase to support the Segment 130 liabilities. This deduct has been between 10 and 28 bps throughout the class period.

ii. Inside Investment Expense

The Inside Investment Expense (IIE) deduct covers the cost of managing the general account assets that support Segment 130, which is where the PFIO liabilities are administratively tracked. Principal's general account assets are managed by its affiliate, Principal Global Investors (PGI). The amount of the IIE deduct is based on the amount that PGI charges Principal for PGI's work in managing the types of general account assets purchased to back Segment 130 liabilities. The amounts that PGI charges Principal for these services are approved annually by the Iowa Insurance Division. To compute the IIE deduct, Principal calculates the weighted average of PGI's charges for managing each type of asset backing the PFIO, based on the allocation of those assets in Principal's general account. This deduct has been between 9 and 13 bps throughout the class period.

iii. Cash Flow Volatility

The Cash Flow Volatility deduct addresses the risk created by the uncertainty of the cash flows from Principal's general account assets, which in turn creates the risk of a mismatch between Principal's assets and liabilities. For example, Principal purchases mortgages, and borrowers frequently pre-pay the underlying mortgages, especially when interest rates fall (borrowers might refinance the mortgages), which makes the cash flow from these assets less predictable. To compute the Cash Flow Volatility deduct, PGI analyzes the anticipated cost of unpredictable cash flows for various types of assets, and Principal then takes the weighted average of those costs for the projected allocations of asset classes it planned to purchase. This deduct has been between 6 and 22 bps throughout the class period, except for one six-month period during the great financial crisis of 2008 when the deduct was 42 bps.

iv. PGI Performance

As noted above, PGI managed Principal's general account by selecting the assets that Principal purchased. Principal believed that PGI was better than the average investor and that PGI often could outperform the average investor by achieving better asset spreads (and therefore higher yields) than were reflected in the computation of the gross yield. Principal used the PGI Performance deduct (sometimes called the Investment Add-On or the RIS Liability Investment Add-On deduct) because it wanted to give participants the benefit of PGI's anticipated outperformance. Principal reviewed this deduct on a regular basis and adjusted it based on historical data, anticipated market conditions, and discussions with PGI about its anticipated outperformance. This deduct is unique because it has always been negative—and thus benefitted the participants by increasing the GIRs and CCRs—except during one six-month period in the wake of the great financial crisis of

2008 in which it was zero. During the periods when the PGI Performance deduct was non-zero, it ranged from -5 to -25 bps.

v. Negative NCF

When Principal set the GIR and the CCR in advance of each six-month period, it made assumptions about cash outflows for the PFIO during that period. The Negative Net Cash Flow (Negative NCF) deduct accounts for the risk that the actual cash outflows for the PFIO during a given six-month period might be greater than Principal forecasted and might cause one or more GIFs to run out of cash. This deduct was between 1 and 5 bps from 2012 to 2016. It was 0 bps at all other times during the class period.

b. The challenged deducts

Rozo challenges fourteen deducts. The court will make findings about each of them in turn.

i. Standard Expense Support

The Standard Expense Support (SES) deduct was sometimes called the Recordkeeping deduct at trial. It is a type of revenue sharing with the plan, because plans that offer the PFIO as an option to their participants receive a reduction equal to the SES deduct in the fees that they must pay to Principal for administrative services. In other words, the entire amount of money associated with the SES deduct is credited to the plan and its participants in the form of a reduced administrative services fee. Thus, it is a complete "pass-through" to the plan and participants.

As explained, above, to offer a 401(k) plan, a plan sponsor typically hires a third-party service provider to provide the many administrative services associated with the plan. After Principal and the plan sponsor have agreed on the fee for administrative services, usually through negotiation, the plan sponsor can pay the fee to Principal in one of two ways: (a) through fees from investment options and products on the plan menu, commonly referred to as "revenue sharing" or "implicit revenue"; or (b) through a direct charge, which plan sponsors typically choose to pass on to participants. During the class period, revenue sharing was the most common means plan sponsors chose to pay their administrative services fees.

The PFIO contract provides that "[f]ees will be determined by [Principal] for each Guaranteed Interest Fund and the method of paying these fees will be stated in its Applicable Schedule." In turn, each PFIO schedule during the class period contains a section entitled "Fees," which provides: "The effective annual Guaranteed Interest Rate for this Guaranteed Interest Fund has been reduced by the fees as described in Article III and Article IV, Section 5. The reduction equals 0.65%," that is, 65 bps. This 65-bp deduct also was disclosed in the fee summaries, which Principal was required to provide to plans, in a column entitled "Revenue Sharing to Recordkeeper." The SES deduct has been 65 bps at all times during the class period.

Although Rozo contends that no Principal witness, actuary or otherwise, could explain how the SES deduct was set at 65 bps at any time during the class period, Principal's actuaries testified that the amount of the SES deduct was based on expense studies. Principal concedes that the amount of the SES deduct was not periodically reviewed, but Principal argues, and the court finds, that because the SES was a direct pass-through, plans and participants received the benefit of the SES regardless of the amount. Documents relating to the WEC Plan show that the SES deduct of 65 bps was also within the range of revenue sharing offered by many other investment options. Moreover, because the SES deduct was a direct pass-through to plans, it did not result in unreasonable or excessive compensation to Principal—indeed, the SES resulted in no compensation to Principal beyond the fee for administrative services plainly stated in the PFIO plan documents. The court does not find persuasive or credible Rozo's contentions that the evidence shows that the SES deduct for the PFIO resulted in subsidizing the cost of providing non-PFIO investment options and services, paying for the costs of sales efforts unrelated to the PFIO, or contributing to Principal's overall FSA profit objectives. The court also rejects the opinion of Rozo's expert, Dr. Kopcke, that the total of the SES deduct and FSA Pricing Support deduct, discussed next, should have been only 3 bps, as that opinion is not supported by the evidence.

Therefore, the court finds that this deduct is reasonable and that it is in the interest of participants in the PFIO as a pass-through credit to the plan.

ii. FSA Pricing Support

The FSA Pricing Support deduct was first introduced in July 2010 to adjust for over-crediting plans that offered the PFIO for Principal's administrative services. Explanation of this deduct requires some additional background.

Principal provided administrative services to plans, some of which offered the PFIO and some of which did not. Throughout the class period, for all plans for which Principal provided administrative services, its profit for doing so was based on the plan's total assets (known as "return on assets" or ROA). Principal priced its proposed administrative services fees to target a profit equal to 30 bps of ROA—*e.g.*, if a plan had assets of $1 million, Principal targeted a return on those assets of $3,000 (0.30% of $1 million) and included that amount in its proposed administrative fee.

If a plan intended to offer the PFIO, however, Principal was concerned that it potentially could be seen as "double-profiting" on PFIO assets. Specifically, Principal might (1) earn a profit for its provision of plan administrative services (the targeted 30 bps of ROA) on plan assets, including assets allocated to the PFIO, then (2) it might also earn a second profit from the PFIO assets, in the form of a portion of the spread on the PFIO.

To avoid this problem, Principal increased the credit in its plan pricing model from 65 bps (represented by the SES deduct) by 30 bps for assets allocated to the PFIO. To put it another way, a total of 95 bps credit in the plan pricing model represented the SES deduct amount (65 bps) plus an additional credit to eliminate the targeted profit amount for Principal's plan administrative services (30 bps of ROA) that came from PFIO asserts.

By 2010, competition in the market for plan administrative services had lowered Principal's actual ROA to at most 15 bps, instead of the targeted 30 bps of ROA, for plan administrative services. That meant that Principal was over-crediting plans offering the PFIO by at least 15 bps on PFIO assets. In 2010, Principal started using a correction to this over-crediting, which became known as the FSA Pricing Support deduct, by adding a 15-bp deduct to the PFIO. Plans that offered the PFIO would still receive both the 65 bps of plan pricing credit and the 30 bps of extra credit in the plan pricing model, but the new deduct of 15 bps effectively lowered the extra credit from 30 bps to 15 bps, to make it match the ROA of 15 bps that Principal now expected to earn for its provision of administrative services.

Rozo is correct that Principal did not make the adjustment represented by the FSA Pricing Support deduct in a way that Principal would have been required to disclose. However, the applicable regulations did not require such a disclosure, and the net effect of the FSA Pricing Support is that plans receive a pass-through credit of 80 bps for administrative services. Furthermore, the evidence at trial showed that the FSA Pricing Support deduct amount never changed after it was introduced in July 2010, but Principal's profit on plan pricing for administrative services continued to decline. Specifically, the current profit is approximately 3–5 bps of ROA, which means that Principal is once again over-crediting for PFIO deposits in the plan pricing model by 10-12 bps.

The court also rejects Rozo's contention, based on Dr. Kopcke's opinion, that the total deduct for administrative services should be 3 bps. Dr. Kopcke based that opinion on the administrative services for mutual funds with assets under management of up to $100 billion, but Principal provides administrative services to 401(k) plans with assets typically around $1 million, and the evidence shows that a deduct of 3 bps for administrative services would be insufficient.

Therefore, the court finds that this deduct is reasonable and that it represents a reasonable expense of administering the PFIO.

iii. Income Reallocation

When Principal buys assets for its general account, it generally chooses assets that match the liability schedules for its products. For example, if Principal makes a guarantee to pay policyholders a fixed amount in five years, it buys an asset that is likely to mature in five years. The expected return on any given asset usually correlates with the duration of the asset (*i.e.*, how long the asset will take to mature). Longer-duration assets tend to pay higher returns than shorter-duration assets, because there is a longer period of time over which the assets' value could deteriorate so they have a higher risk. However, Principal does not buy specific assets to back each individual product. Instead, Principal periodically looks at all its insurance products, aggregates the types of assets it needs in order to match all its liabilities for those products, and then buys a collection of assets for those products.

As mentioned, above, Principal administratively tracks the liabilities associated with both its FSA products (including the PFIO) and its Full Service Payout (FSP) products within a segment of its general account known as Segment 130. Principal's FSA products tend to have shorter-term guarantees than FSP products, because many of the FSP products are annuities that are used to pay retirees an income stream over a period of many years. Thus, when Principal aggregates the assets it must buy in order to support the liabilities associated with its FSA and FSP products, the FSP business enables Principal to buy longer-duration assets to support the FSA liabilities than it would if FSA were a stand-alone business. As a result, the set of assets purchased to back the liabilities associated with FSA products earned a higher return than those assets would earn without the FSP business.

The Income Reallocation deduct reallocated FSA income in order to restore, as an accounting matter, the allocation of returns attributable to the FSP business. This deduct was 13 bps at the beginning of the class period, was reduced to 5 bps in January 2010, and was reduced to zero in July 2010.

Rozo contends that this deduct was a "subsidy" to investors in other Principal products because it reduced the interest rates Principal paid to PFIO participants, and those proceeds were used to pay higher rates to those invested in products other than the PFIO. Principal did refer to the Income Reallocation deduct as a "subsidy," but the court finds that it properly allocated back to Principal's FSP business the part of the higher return from longer-duration assets that Principal was able to buy to support the FSA liabilities because FSA funds were aggregated with FSP funds. It did not transfer to the FSP business any earnings the FSA funds could have earned, if the FSA business had stood alone. Consequently, elimination of this deduct would have subsidized the PFIO at the expense of FSP products. Elimination of this deduct would also have linked the return on a no-risk product, from the participants' perspective, to assets that were higher risk, distorting the actuarial analysis and the safety and stability of the PFIO product.

Dr. Kopcke opined that the FSA Pricing Support deduct, discussed just above, replaced the Income Reallocation deduct. The court rejects that opinion, however, because the Income Reallocation deduct was 5 bps at the time it was eliminated, and the FSA Pricing Support was always 15 bps, and, more importantly, the two deductions served different purposes.

Therefore, the court finds that the Income Reallocation deduct was reasonable and that it represented a reasonable expense of administering the PFIO during the small part of the class period it was applied.

iv. Bridgeover

The Short-Term Bridgeover deduct addressed the expected loss of earnings due to the delay in investing assets with monies deposited into the PFIO during the period between (a) the date that Principal received participants' deposits and began crediting interest, and (b) the later date on which Principal was able to invest those deposits in assets and start earning a return. This lag period exists both because it can take weeks or months to close transactions for the purchase of certain assets and because there is sometimes a scarcity of investment opportunities in the market for certain types of asset classes.

Principal calculated the Bridgeover deduct by (a) determining the proportion of each type of asset it planned to purchase to back its Segment 130 liabilities; (b) estimating the average number of days it would take to purchase each type of asset, based on historical data provided by PGI; (c) computing a total weighted lag period for the assets it planned to purchase; and (d) computing the estimated income shortfall by taking the average estimated shortfall for each year along the PFIO's 10-year maturity schedule, minus the short-term cash rate it would earn on deposits during the lag period. The Bridgeover deduct was reviewed by Principal on at least an annual basis and sometimes on a monthly basis.

This deduct was between 3 and 6 bps from the start of the class period until January 2015, at which time it was reduced to zero. Around January 2015, Principal reduced the need for this deduct by pre-committing to buying assets in advance of receiving deposits. Principal's risk associated with pre-committing to asset purchases, however, was uncompensated.

Dr. Kopcke opined that the Bridgeover deduct should be reduced to zero for all periods, because he believes that Principal should have eliminated the risk that the deduct addresses by managing its general account assets differently, such as by employing hedging strategies and pre-committing to purchase assets before 2015. The court finds, however, that pre-committing to purchase assets cannot eliminate the lag period for purchases of all asset classes, where, for example, commercial real estate assets can take weeks or months to purchase because of the need to conduct due diligence on the property. Similarly, hedging cannot eliminate all risks and in fact creates new costs, such as the substantial cost of collateralizing the hedge. Dr. Kopcke did not consider these problems in his opinion. Instead, this is another opinion based on hindsight. The court is also unpersuaded by Dr. Kopcke's opinion that the Bridgeover deduct should have been accounted for in the

Inside Investment Expense (IIE) deduct, one of the unchallenged deducts discussed above, because that deduct addressed different expenses.

Therefore, the court finds that this deduct is reasonable and that it represents a reasonable expense of administering the PFIO.

v. Spread Risk

The Spread Risk deduct addresses the risk that changes in asset spreads will cause Principal to purchase assets at a lower investment income rate than was assumed when it set the GIR. Principal estimated the gross expected yield based on asset spread information 45 days before it began taking deposits for each new GIF and before it could begin buying assets with those deposits, and the asset spreads could change not only during those 45 days but also during the six-month period that the GIF was open for deposits. Principal documented its analysis of the Spread Risk deduct in detailed Excel spreadsheets that reflected reasonable judgments about potential changes in asset spreads and calculated the potential impact of those changes on the amounts of future participant deposits. The Spread Risk deduct has been between 4 and 8 bps throughout the class period.

Although Rozo asserts that spread risk can sometimes benefit Principal, so that the deduct should be reduced to prevent Principal from unfairly profiting, the evidence shows that the actuarial calculations for this deduct considered both potential gains and losses in the analysis of this risk. Rozo asserts, again, that this risk could have been addressed by hedging and such costs were covered by the IIE, but the court finds that Principal's witnesses credibly testified that hedging is insufficient to address these risks and that the IIE deduct does not include hedging costs.

Therefore, the court finds that this deduct is reasonable and that it represents a reasonable expense of administering the PFIO.

vi. Deposit Risk

The Deposit Risk deduct (also referred to as the I-Guarantee Risk deduct) addressed the risk that potential changes in interest rates would affect the amounts of participants' deposits into the PFIO, which in turn affected the total amounts that Principal had to pay in guaranteed interest. Principal attempted to address these risks in part through hedging, meaning that it bought interest rate swaps that mitigated some of the effect of declining interest rates, but hedging alone is insufficient to fully mitigate these risks, because risks relating to future participant behavior are unpredictable.

In determining the Deposit Risk deduct, Principal used data reflecting historical changes in interest rates for various types of assets to model various scenarios and assess how future interest rates might change. Principal's computations of the Deposit Risk deduct were set forth in detailed Excel spreadsheets that attempted to model the potential effects of changing interest rates under various scenarios. The results of these detailed actuarial analyses were used to determine whether the Deposit Risk deduct needed to be changed. Principal reviewed the Deposit Risk deduct on an annual basis. This deduct was 5 bps from the start of the class period until July 2017, when it was reduced to 3 bps.

Again, contrary to Rozo's contentions, Principal's calculations of this deduct considered both potential gains and losses, hedging could not fully account for Deposit Risk, and the IIE did not address this risk.

Therefore, the court finds that this deduct is reasonable and that it represents a reasonable expense of administering the PFIO.

vii. RIS Risk Management

The Retirement and Income Solutions (RIS) Risk Management deduct covered two categories of expected costs and risks relating to the PFIO. First, this deduct covered Principal's administrative and overhead costs associated with PFIO risk management activities, such as the costs of personnel in Principal's RIS division involved in management of the PFIO, as well as the cost of the daily hedging program in place for the PFIO. Second, this deduct covered the expected risk of volatility caused by potential plan-level withdrawals, taking into account the fact that the PFIO has a 12-month notice requirement (or 12-month put) for plan withdrawal. In particular, Principal took the risk that it would have to sell assets prematurely, and likely at a loss, to raise cash to pay withdrawal requests if many plans chose to leave the PFIO around the same time.

Principal's actuaries estimated this deduct through studies of its risk management activities and stochastic analyses of the potential market value losses associated with plan lapses (departures) for products with a 12-month put. Principal refined its analysis of the 12-month put risk to make it suitable for pricing and began to use that refined analysis to compute the RIS Risk Management deduct for future GIRs from 2015 onward. The RIS Risk Management deduct was between 10 and 22 bps during the class period.

Dr. Kopcke opined that the RIS Risk Management deduct should have been reduced to 1 bp for the entire class period, based solely on a March 26, 2014, memorandum that was presented to Principal's RIS Risk Committee. The court finds credible Principal's witnesses' testimony that that memorandum was a point-in-time historical analysis, not a forward-looking analysis, and that that memorandum did not address administrative and overhead costs associated with PFIO risk management activities so that it was not suitable for pricing purposes.

Therefore, the court finds that this deduct is reasonable and that it represents a reasonable expense of administering the PFIO.

viii. Surplus & FIT

The Surplus & Federal Income Taxes (FIT) deduct is calculated to target a return on the capital that Principal must set aside in accordance with the regulatory requirements that govern its general account assets. That is, the Surplus & FIT deduct was computed in a manner that sought to earn a return of 15% on the portion of its own capital that Principal allocated to back the PFIO. The Surplus & FIT deduct was computed annually using the following steps: (1) determine the allocated percentage of RBC that Principal must hold to back the PFIO liabilities, based on the NAIC Instructions; (2) multiply that figure by a factor that represents the amount of capital the company actually holds; (3) multiply that amount by the targeted return factor; and (4) subtract the returns Principal makes by investing the RBC.

Because the PFIO has a 5% surrender charge, the NAIC Instructions classify it as a medium-risk product. Despite the clarity of the NAIC Instructions on this issue, Dr. Kopcke believes the PFIO was low risk and therefore Principal should use a lower deduct associated with a low risk product, while complying with NAIC reporting requirements. That risk classification directly affects the calculation of the RBC and, in turn, the Surplus & FIT. The Surplus & FIT deduct was between 44 and 92 bps during the class period.

The court rejects Dr. Kopcke's opinion that Principal should have targeted a return of 10% to 11%, instead of 15% (and later 20%, addressed in the discussion of the Additional Surplus deduct, below), because his figure is based on the enterprise-wide weighted average cost of capital (WACC) for Principal Financial Group, and an enterprise-wide WACC is not an appropriate figure to use in pricing a product, except in the extremely rare circumstance where the product's risk profile identically matches the risk profile of the enterprise as a whole. There is no evidence that PFIO's risk profile has such an identical match. Dr. Kopcke also considered only the WACC of Principal Financial Group and not Principal Life Insurance Co., which is the entity that actually offers the PFIO. Furthermore, Dr. Kopcke asserted that the NAIC classification of the PFIO as medium-risk was inappropriate, but the court is not persuaded that it would have been proper for Principal to reject the NAIC classification. Nor is the court persuaded by other aspects of Dr. Kopcke's opinion about this deduct, because they do not fit with the facts demonstrated at trial. Indeed, the court concludes that many aspects of Dr. Kopcke's opinion about this deduct would have required Principal to reallocate some of the costs and risks associated with the PFIO to other products, thus giving the PFIO unwarranted preferential treatment.

Therefore, the court finds that this deduct is reasonable and that it represents a reasonable expense of administering the PFIO.

ix. Additional Surplus

The last deduct that Rozo challenges is the Additional Surplus deduct. Like the Surplus & FIT deduct, the Additional Surplus deduct is calculated to target a return on the capital that Principal must set aside in accordance with the regulatory requirements that govern its general account assets. Specifically, the Additional Surplus deduct was intended to increase the targeted return on Principal's capital held to back the PFIO from 15% to 20%. Principal adopted the Additional Surplus deduct because, as a result of the great financial crisis of 2008, it determined that guaranteed products like the PFIO had become riskier and more costly for Principal than the NAIC Instructions and credit rating agency requirements suggested, due to the increased cost of liquidity, and because of increased capital requirements that credit rating agencies imposed on insurance companies after the great financial crisis and maintain to this day. The Additional Surplus deduct was 35 bps for almost the entire class period.

Dr. Kopcke opines that this deduct should be entirely eliminated, because the Surplus & FIT deduct fully compensates Principal for the capital it needs to use to support the PFIO and because Principal also derives profit from the PFIO through the cushion and profit that it incorporates into its other deducts. The court rejects Dr. Kopcke's opinion, however, because it is based on unrealistic assumptions and mischaracterization of the factors involved in the calculation under the NAIC instructions. To the extent that Rozo contends that the Additional Surplus deduct was not imposed as a result of the great financial crisis, but simply to increase Principal's income, the credible evidence is to the contrary. Furthermore, Principal's return on capital never hit the targeted 20% even with the Additional Surplus deduct.

Therefore, the court finds that this deduct is reasonable and that it represents a reasonable expense of administering the PFIO.

II. CONCLUSIONS OF LAW

Rozo has brought two separate ERISA breach of fiduciary duty claims relating to the PFIO, although both are premised on his contention that Principal should have paid participants a higher CCR. The court recognizes that Principal argues that both claims are barred by the ERISA "guaranteed benefit plan" (GBP) exclusion. As the Supreme Court has explained, "Fiduciary status under ERISA generally attends the management of 'plan assets.'" *John Hancock Mut. Life Ins. Co. v. Harris Tr. & Sav. Bank*, 510 U.S. 86, 89 (1993). There is, however, a statutory exclusion from "plan assets" for "guaranteed benefit policies" in ERISA § 401(b)(2), 29 U.S.C. § 1101(b)(2). *Id*. Although the Eighth Circuit Court of Appeals held that Principal is a fiduciary when it sets the CCR for participants in the PFIO, neither this court nor the Eighth Circuit Court of Appeals has considered the applicability of the GBP exclusion in this case. *See Rozo v. Principal Life Ins. Co*., 949 F.3d 1071, 1073 (8th Cir.), *cert. denied*, No. 19-1462 (2020); *see also Rozo v. Principal Life Ins. Co*., 344 F. Supp. 3d 1025, 1031 (S.D. Iowa 2018), *rev'd and remanded*, 949 F.3d 1071 (8th Cir. 2020). Once again, in the context of this case, the court finds that it need not address Principal's assertion of the GBP exclusion unless the court finds that one or both of Rozo's claims otherwise have merit.

This case presents interesting issues about what it means to be an ERISA fiduciary under the circumstances presented, here. "To prevail on a claim of breach of fiduciary duty under ERISA, the plaintiff must make a prima facie showing that [1] a defendant acted as a fiduciary, [2] breached his fiduciary duties, and [3] thereby caused a loss to the Plan." *See Dormani v. Target Corp*., 970 F.3d 910, 9164(8th Cir. 2020) (bracketed numbers inserted; internal quotation marks omitted); *see also Usenko v. MEMC LLC*, 926 F.3d 468, 472 (8th Cir. 2019); *Braden v. Wal-Mart Stores, Inc*., 588 F.3d 585, 594 (8th Cir. 2009). The parties vigorously dispute numerous matters relating to the elements of Rozo's claims, but the court finds that the dispositive issues relate to the "breach" element.

The court will consider Rozo's breach of fiduciary duty claims in turn.

A. The Disloyalty Claim

Rozo's claim in Count I of his Complaint relies on § 404(a)(1)(A) of ERISA, codified at 29 U.S.C. § 1104(a)(1)(A), which provides as follows:

> (1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and--
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries; and
>
> (ii) defraying reasonable expenses of administering the plan. . . .

29 U.S.C. § 1104(a)(1)(A). This provision is described as imposing a duty of loyalty on an ERISA fiduciary. *See Dormani*, 970 F.3d at 916 ("The ERISA duty of loyalty requires a fiduciary to 'discharge his duties with respect to a plan solely in the interest of participants and beneficiaries.'" (quoting 29 U.S.C. § 1104(a)(1)).

Rozo claims that Principal violated this fiduciary duty of loyalty because Principal did not set the CCR for the PFIO every six months to provide the maximum rate of return for plan participants. The analysis, below, shows that Rozo's sole measure of whether Principal acted "solely in the interest of the participants and beneficiaries," or instead breached its duty of loyalty, is the CCR that Principal paid to participants and, specifically, whether Principal paid the maximum possible CCR, rather than measuring Principal's actions in light of all the investment objectives of the PFIO. Rozo's loyalty claim also relies on a hindsight analysis of the deducts Principal made to determine the GIRs and, hence, the CCR, rather than on challenges to the actuarial predictions that Principal made when setting each GIR and the CCR, to support Rozo's claim that Principal did not act in the interest of the participants in the PFIO.

The court must address several disputes between the parties about the standards applicable to this claim.

1. The participants' interest

While the parties agree that ERISA requires that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries," they dispute what "the interest of the participants" is or, more specifically, what the components of that interest are. There is no express definition of "the interest of the participants" in ERISA or applicable case law, and there is scant case law that addresses "the interest of the participants" in ways relevant to this case.[2]

Nevertheless, the statute defining the duty of loyalty plainly identifies "the interest of the participants" as including "providing benefits" and "defraying reasonable expenses of administering the plan," as these two things are identified as the fiduciary's "exclusive" purpose. *See* 29 U.S.C. § 1104(a)(1)(A); *see also Pegram v. Herdrich*, 530 U.S. 211, 223–24 (2000) ("The statute provides that fiduciaries shall discharge their duties with respect to a plan 'solely in the interest of the participants and beneficiaries,' § 1104(a)(1), that is, 'for the exclusive purpose of (i) providing benefits to participants and their beneficiaries; and

[2] For example, the Eighth Circuit Court of Appeals has explained,

> The ERISA duty of loyalty requires a fiduciary to "discharge his duties with respect to a plan solely in the interest of participants and beneficiaries." 29 U.S.C. § 1104(a)(1). This duty includes the "obligation to deal fairly and honestly with all plan members" and prohibits "affirmatively miscommunicat[ing] or mislead[ing] plan participants about material matters regarding their ERISA plan when discussing a plan." *Kalda v. Sioux Valley Physician Partners, Inc.*, 481 F.3d 639, 644 (8th Cir. 2007). Complying with this duty may require a fiduciary to speak up when he knows (or should know) a beneficiary "is laboring under a material misunderstanding of plan benefits." *Id.*

Dormani v. Target Corp., 970 F.3d 910, 916 (8th Cir. 2020). Rozo does not assert that Principal dealt unfairly and dishonestly with plan members or affirmatively miscommunicated or misled them when discussing the plan.

(ii) defraying reasonable expenses of administering the plan,' § 1104(a)(1)(A)."). Thus, Rozo's narrow focus on the payment of the maximum possible CCR is undermined by the statute itself, because a participant also has an interest in payment of reasonable expenses of administering the plan. No plan could continue, if those expenses were not paid.

Furthermore, the court finds that "the interest of the participants" involves various investment characteristics of a fund, not just its rate of return. The PFIO is guaranteed to preserve the capital that participants allocate to it and to yield returns to participants at a fixed rate. Because Principal guarantees benefits at a fixed rate of return, Principal bears all the financial risk associated with offering the PFIO, while from the participants' perspective, the PFIO is a virtually no-risk product. The PFIO is attractive to plan participants, because it is a safe, stable product that preserves their capital and earns predictable returns, even though the rate of return is lower than other investment options available in their plans. Rozo's own behavior demonstrates that this is true, because following the great financial crisis of 2008, Rozo increased the percentage of his portfolio that was invested in the PFIO from 45% to 80%. He did so precisely for the reasons that the PFIO was offered—stability, preservation of principal, and guaranteed return—and because the PFIO outperformed all of his other investments. Indeed, the Supreme Court recognized that ERISA was intended to "help guarantee the 'equitable character and the soundness of [private pension] plans' in order to protect 'the interests of participants in private pension plans and their beneficiaries.'" *Boggs v. Boggs*, 520 U.S. 833, 845 (1997). Thus, soundness and stability of a product is also in "the interest of participants." It follows that actions of Principal that served these interests are also in "the interest of the participants."

Consequently, the court's analysis of "the interest of the participants" will look beyond Rozo's narrow focus on the payment of the maximum CCR.

The court finds that Principal's determination of the deducts from the GIRs for the PFIO properly served "the interest of the participants" as to payment of benefits in the form of a guaranteed return, defraying reasonable expenses, and providing a sound and stable investment. Rozo's expert, Dr. Kopcke, is not an actuary, so he did not conduct any actuarial analyses in determining what he believes were more appropriate percentages for the deducts from the GIRs for the PFIO. The CCRs that Dr. Kopcke believes Principal should have offered—*i.e.*, rates that on average were approximately 200 bps (2.00%) higher than the PFIO's actual CCRs—would have resulted in a product that is not economically viable and does not exist in the market. Indeed, Dr. Kopcke's proposed deducts and GIRs would result in the PFIO having guaranteed rates of return that were *higher* than non-guaranteed, market-risk-based investment options available to participants during the class period. Principal's evidence, including the testimony of its expert, Dr. Merrill, demonstrates that Dr. Kopcke's rate opinions describe an entirely different product than the PFIO, specifically, a hypothetical low-risk, high-return product that would be unsustainable, does not exist in the market, and defies basic economic principles, which dictate that products presenting lower risks for participants have lower rates of return than products with higher risks to participants. Unlike the PFIO, that hypothetical product would not serve "the interest of participants."

2. Conflict of interest

Rozo contends that undivided and unconflicted loyalty, with no consideration for the fiduciary's own gain, is required under ERISA, so that a fiduciary acting under a conflict of interest breaches its fiduciary duty. Principal contends that a conflict of interest is not enough, standing alone, to establish a breach of fiduciary duty. Consequently, the court must consider what role a conflict of interest or potential conflict of interest plays in proof of a claim of breach of the ERISA fiduciary duty of loyalty.

The court concludes that a conflict of interest, standing alone, is not enough, at least in the circumstances presented, here, to constitute a breach of the ERISA fiduciary duty of loyalty. As the Supreme Court has explained, "Under ERISA, . . . a fiduciary may have financial interests adverse to beneficiaries." *Pegram v. Herdrich*, 530 U.S. 211, 225

(2000). This tension is permissible, not just for employers or plan sponsors, but also for entities that provide services to an ERISA plan, such as Principal. *Id.*[3]

Further authority suggests that the mere existence of a conflict of interest between a fiduciary and a participant generally is not enough to establish a breach of fiduciary duty claim. In *Metropolitan Life Insurance Co. v. Glenn*, 554 U.S. 105 (2008), a case in which the Supreme Court noted that a benefit determination was a fiduciary act in which the administrator owed a special duty of loyalty to the plan beneficiaries, *id.* at 111, the Court found that a plan administrator who both determines whether an employee is eligible for benefits and pays benefits out of its own pocket has a conflict of interest, *id.* at 108. The Court held, however, that courts should consider this conflict of interest *as a factor* in determining whether a plan administrator had breached its fiduciary duty. *Id.* More specifically still, the Court held that "the significance of the factor will depend upon the circumstances of the particular case." *Id.* Thus, the existence of a conflict or potential conflict of interest does not necessarily demonstrate a breach of the fiduciary duty of loyalty.

Rozo offers an alternative argument that a fiduciary operating under a conflict of interest must be especially scrupulous, but that Principal was not scrupulous when setting the CCR, because it took no steps to mitigate the conflict, thus breaching its duty of loyalty. To put it another way, Rozo appears to suggest that the failure to mitigate a conflict of interest is enough to establish a breach of the fiduciary duty of loyalty. He argues that Principal should have mitigated the conflict of interest by stepping aside and allowing

[3] Principal relies on another portion of the decision in *Pegram* as standing for the Court's rejection of a theory of breach of fiduciary duty that would hinge on the mere "possibility of conflict," because such a theory would lead to "nothing less than elimination of the for profit HMO," the ERISA plan at issue in that case. 530 U.S. at 232-34. This court finds this portion of the decision in *Pegram* is inapposite, because the Court was there considering whether physicians who made mixed decisions in the course of providing medical care for profit were even acting as fiduciaries, not whether they breached their fiduciary duty. *See id.* at 237 (holding "that mixed eligibility decisions by HMO physicians are not fiduciary decisions under ERISA").

independent third parties to set the CCR or, at the very least, that Principal should have consulted with independent third parties when setting the CCR. He relies on *Leigh v. Engle*, 727 F.2d 113 (7th Cir. 1984), which involved both the duty of loyalty under § 1104(a) and the duty to refrain from self-dealing under § 1106(b)(1). 727 F.3d at 123. The court finds that *Leigh* does not go as far as Rozo contends.

Rozo is correct that, in *Leigh*, the Seventh Circuit Court of Appeals stated, "Where the potential for conflicts is substantial, it may be virtually impossible for fiduciaries to discharge their duties with an 'eye single' to the interests of the beneficiaries, and the fiduciaries may need to step aside, at least temporarily, from the management of assets where they face potentially conflicting interests." *Leigh*, 727 F.2d at 125; *see also Acosta v. Brain*, 910 F.3d 502, 517 (9th Cir. 2018) ("ERISA . . . require[s] . . . that the fiduciary with two hats wear only one at a time, and wear the fiduciary hat when making fiduciary decisions."). This statement in *Leigh* appears to this court to be consistent with the Supreme Court's subsequent statement in *Metropolitan Life Insurance* that a conflict of interest is *a factor* in determining whether there has been a breach of fiduciary duty and that the significance of the factor will depend upon *the circumstances of the particular case*. 554 U.S. at 108. The court in *Leigh* did not, however, hold that the failure to mitigate a conflict of interest or potential conflict of interest constituted a breach of fiduciary duty.

In *Leigh*, members of the Engle Group and other defendants who were fiduciaries of the Reliable Trust, used assets of the plan to purchase stock of companies that were targets of the defendants' investment program during a contest for control of those companies. *Id*. at 115. As the court explained,

> The undisputed facts in the record show that the district court clearly erred when it concluded that plan assets were used exclusively in the interests of beneficiaries. The Reliable Trust administrators did not act solely in the interests of the plan beneficiaries where they invested the trust's assets in companies involved in corporate control contests, where the administrators themselves were actively engaged in the control

> contests and had substantial interests in them, where the administrators failed to make an intensive and independent investigation of the investment options open to the trust and where the trust's investment decisions never deviated from the best interests of the Engle group.

Leigh, 727 F.2d at 124. Thus, it is true that a conflict of interest was *part* of the court's analysis.

Nevertheless, the court in *Leigh* found factors in addition to a conflict of interest were relevant in evaluating whether the fiduciaries breached their duty:

> Under ERISA sections 404(a), 406(a)(1)(D) and 406(b)(1), where plaintiffs allege that fiduciaries have used plan assets for their own purposes in a corporate control contest, courts must examine closely the circumstances surrounding the alleged use of plan assets. *In this case, several factors are relevant in deciding whether the plan administrators acted solely in the interests of the plan beneficiaries. First*, the risk of conflicts between the interests of the fiduciaries and beneficiaries is the key warning signal for possible misuse of plan assets. *Second*, whether fiduciaries with divided loyalties make an intensive and scrupulous investigation of the plan's investment options may be highly probative of the fiduciaries' loyalties. *Third*, the consistent management of plan assets in congruence with the fiduciaries' personal interests over a substantial period of time in control contests may be probative of whether the fiduciaries have acted solely in the interests of the beneficiaries. *This list is by no means exhaustive, but these are the factors applicable here*.

Leigh, 727 F.2d at 127 (emphasis added). Thus, the court in *Leigh* did not hold that the failure to mitigate an actual or potential conflict of interest established a breach of fiduciary duty, but it treated a conflict of interest as one relevant factor in determining whether the duty had been breached.

More specifically, the court explained,

> We conclude, therefore, that [two fiduciaries] violated their fiduciary duties under section 404(a), section 406(a)(1)(D) and section 406(b)(1) of ERISA by investing the Reliable Trust's

> assets in Berkeley, OSI and Hickory. *We reach that conclusion because the fiduciaries had divided loyalties with clear potential for conflicts of interests, because the fiduciaries with divided loyalties failed even to seek independent, disinterested advice regarding these investments and their duties to the plan beneficiaries and because, throughout prolonged contests for corporate control, the fiduciaries' use of the trust assets dovetailed at all times with the interests of the Engle group.* Were we to reach another result in this case, we do not see how the interests of ERISA plan beneficiaries could be protected from those who would use trust property in contests for corporate control. The fiduciary's duty of loyalty is exacting, and the Reliable Trust administrators' use of the assets entrusted to them falls substantially short of that exacting standard.

Leigh, 727 F.2d at 132 (emphasis added). Thus, while relevant, a conflict of interest and the fiduciary's actions, if any, to mitigate that conflict are not necessarily dispositive of whether the fiduciary breached its duty of loyalty.

Here, Rozo argues that Principal had a "direct" financial conflict of interest, because when Principal increased the deducts for the PFIO, doing so increased Principal's revenue and lowered the rate of return to participants, but when Principal decreased the deducts, it decreased its revenue and increased the rate of return to participants. Rozo contends, further, that Principal did nothing to recognize, accept, or mitigate that conflict of interest. Principal contends that there is no "direct" conflict of interest regarding the PFIO, because its interests and those of the PFIO participants are aligned.

The court concludes that there is tension between Principal and the PFIO participants, because the higher the deducts to the GIRs for the PFIO, the lower the rate paid to participants will be, while—with the exception of "pass through" deducts—the higher the deducts, the higher Principal's revenue from the PFIO will be. In this case, however, there is no evidence of a conflict of interest anything like that presented in *Leigh*, which involved using plan assets in contests for corporate control of companies targeted by the administrators. Therefore, the court finds that the ever-present tension between profit for Principal and the return for the participants did not require Principal to seek advice from independent third parties in setting the CCR or to require Principal to surrender the task of setting the CCR to independent third parties to avoid a breach of fiduciary duty. *See Leigh*, 727 F.2d at 125 ("Where the potential for conflicts is substantial, it may be virtually impossible for fiduciaries to discharge their duties with an 'eye single' to the interests of the beneficiaries, and the fiduciaries may need to step aside, at least temporarily, from the management of assets where they face potentially conflicting interests.").

In addition to the lack of a true conflict of interest, the market for these products adequately protects investors. When all the components of "the interest of the participants" are considered, there is substantial alignment between "the interest of the participants" and Principal's interest. It is in both the participants' and Principal's interest to establish a CCR that will appropriately account for Principal's risks and costs in offering the PFIO, not just so that the product can remain competitive in the market, but so that Principal can make good on its guarantees to participants. Participants do not simply want the best rate of return; they want the best rate of return they can get while taking essentially no risk and enjoying the safety and security of a soundly backed investment. Indeed, a guaranteed CCR that is too high threatens the long-term sustainability of the guarantees of the PFIO, which is detrimental to "the interest of the participants."

In asserting a "direct" conflict of interest, Rozo also puts too much emphasis on Principal's target of a 15% to 20% return on the monies Principal must set aside to back the PFIO, as compared to the participants' return, which ranged from 1.10% to 3.50% during the class period. The evidence at trial showed that the 15% to 20% return that Principal targeted for the additional capital it was required to set aside to back the PFIO was well within the range that is standard in the industry. Thus, allowing for such a return on the plan provider's funds backing the product would have been a "reasonable expense of administering the plan," which the court recognized as a component of "the interest of the participants." That "reasonable expense" would have been present, if the product provider was not also a fiduciary, and in this court's view, it does not become an unreasonable expense where the product provider is a fiduciary.

Moreover, as pointed out, above, the 15% to 20% targeted return applied solely to Principal's own funds that Principal set aside to back the PFIO, not to the $1 billion in the PFIO from participant's allocations of monies to the PFIO. For example, the PFIO had an average of approximately $1 billion allocated to it during the class period, and Principal backed the PFIO with its own capital equal to 4.3% of that amount—*i.e.*, approximately $43 million of Principal's own money. Principal was not receiving 15% to 20% on the entire $1 billion invested by PFIO participants, while only paying those participants a return of 1.10% to 3.50% on the participants' investment. As also noted, above, Principal's actual return on the capital backing the PFIO was estimated to be 5% to 16% during the class period, which is significantly lower than the targeted 15% to 20%. Therefore, the targeted return on Principal's own money does not present a conflict of interest.

Because the court concludes that the potential for conflict with participants was slight, rather than substantial, that conflict is not enough to establish a breach of fiduciary duty and, indeed, it provides no inference of a breach of the fiduciary duty of loyalty. Furthermore, Principal's alleged failure to mitigate that tension is not, in the circumstances of this case, a breach of fiduciary duty, where the court finds that Principal's challenged deducts were reasonable expenses of the plan, for the reasons explained, above, in § I.B.2.b.

3. Motivation

Next, in their arguments about whether Principal breached its ERISA fiduciary duty of loyalty, the parties dispute the focus of the analysis of such a claim. Rozo contends that it is well-established that the focus of a disloyalty claim is on the fiduciary's motivation. In contrast, Principal argues that courts look to the process by which the fiduciary made the challenged decision, not the outcome of that process. Principal argues this focus on process makes sense, because Principal's deducts are actuarial judgments about expected costs and risks during a future 10-year period, and because Rozo has not argued that Principal's actual compensation from offering the PFIO was too high. Principal also argues that cases that discuss motivation say only that it is relevant to, not that it is the focus of, a disloyalty claim.

The court finds that, on the question of the focus of a disloyalty claim, Rozo has the better argument. As Rozo points out, the Eighth Circuit Court of Appeals has recognized that "[a] fiduciary can abuse its discretion and breach its duties by acting on improper motives, even if one acting for the right reasons might have ended up in the same place." *Tussey v. ABB, Inc.*, 850 F.3d 951, 958 (8th Cir. 2017) (considering a § 1104(a)(1) fiduciary duty claim); *see also Allen v. Wells Fargo & Co.*, 967 F.3d 767, 776 (8th Cir. 2020) (finding the pleading of a claim of breach of the duty of loyalty insufficient, *inter alia*, because "Appellants fail to allege any specific facts from which a court can infer that Appellees were motivated by disloyal reasons in choosing not to disclose information"). The First Circuit Court of Appeals has put it more baldly: "[I]n reviewing ERISA duty of loyalty claims, we have asked whether the fiduciary's 'operative motive was to further its own interests.'" *Brotherston v. Putnam Investments, LLC*, 907 F.3d 17, 40 (1st Cir. 2018) (quoting *Ellis v. Fid. Mgmt. Tr. Co.*, 883 F.3d 1, 6 (1st Cir. 2018), and rejecting the plaintiff's claim that the district court had erred by holding that a claim of breach of the duty of loyalty requires a showing of improper motivation). Furthermore, contrary to Principal's contentions, *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585 (8th Cir. 2009), does not stand for the proposition that the focus of a disloyalty claim is on process, rather than motivation. Instead, in that case, the court explained, "In evaluating whether a fiduciary has acted *prudently*, we therefore focus on the process by which it makes its decisions rather than the results of those decisions." 588 F.3d at 595 (emphasis added); *see also Davis v. Washington Univ. in St. Louis*, 960 F.3d 478, 482 (8th Cir. 2020) ("This statutory duty of prudence establishes 'an objective standard' that focuses on 'the process by which' decisions are made, 'rather than the results of those decisions.'" (quoting *Braden*, 588 F.3d at 595)).

Nevertheless, the court does not discount the proposition that a demonstrably reasonable process provides an *inference* that an ERISA fiduciary's motive was to act in "the interest of the participants," while a demonstrably unreasonable process, or a process leading to a demonstrably unreasonable result, provides an *inference* that an ERISA fiduciary's motive was to pursue its own interest, rather than "the interest of the participants." Also, because one component of "the interest of the participants" is "defraying *reasonable* expenses of administering the plan," a reasonable process to determine those expenses provides an *inference* that the expenses defrayed were reasonable.

Turning to the question of whether Principal breached its ERISA fiduciary duty of loyalty, Rozo contends that there is ample evidence that Principal's motives in rate-setting were managing Principal's risks, trying to ensure a particular rate of return on the capital Principal set aside to support the PFIO and its other general account products, and attracting and maintaining business for Principal, not paying participants the best rate possible. He argues that Principal overreaches when it asserts these goals were also to benefit participants, because Principal set the deducts well in excess of what would have been necessary to prevent insolvency. He also argues that trying to set a rate that is "fair to both" Principal and participants is not consistent with ERISA's strict duty of loyalty. Principal points out that its witnesses testified that Principal's motivation in pricing the PFIO was to prioritize participants' interests.

The court finds credible the testimony of Principal's witnesses that Principal's actuaries who reviewed the deducts "tr[ied] to set the best rate that [they could] for participants" while also appropriately accounting for Principal's anticipated costs and risks, to ensure Principal could make good on its obligation to pay participants the PFIO's guaranteed rate regardless of future market conditions. *See* 11/4/20 Tr. 239:25–240:1

(Gustafson's testimony); *see also* 11/6/20 Tr. 755:15–20 (Irlmeier's testimony); 11/9/20 Tr. 1052:17–25 (Soethout's testimony). Rozo's contentions that he offered evidence that Principal's motivations were managing Principal's risks, trying to ensure a particular rate of return on the capital Principal set aside to support the PFIO and its other general account products, and attracting and maintaining business for Principal do not preclude this finding. This is so, because managing risks is aligned with participants' interests in a guaranteed return. Similarly, ensuring a rate of return on the capital that Principal sets aside to support the PFIO aligns with the participants' interest in paying "reasonable expenses of administering the fund," which the court identified, above, as a component of "the interest of the participants." Even attracting and maintaining business for Principal aligns with "the interest of the participants" in the stability of the PFIO, in light of evidence about the effect a spate of withdrawals would have upon the stability of the plan.

Furthermore, the primary support Rozo offers for his contention that the deducts were excessive is the testimony of his expert, Dr. Kopcke. However, Dr. Kopcke is not an actuary, so he did not conduct any actuarial analyses in determining what he believes were more appropriate percentages for the deducts; instead, he used a hindsight analysis. The court finds his opinions wholly unpersuasive in light of the evidence of the reasonable—indeed, meticulous—process Principal used to determine the deducts. As explained, above, that reasonable process provides an inference—here, a strong one—that Principal's motive was to act in "the interest of the participants."

Therefore, the court finds in favor of Principal and against Rozo on Rozo's claim of breach of the ERISA fiduciary duty of loyalty in Count I of Rozo's Complaint.

B. The Self-Dealing Claim

Rozo's claim in Count II of his Complaint relies on § 406(b)(1) of ERISA, codified at 29 U.S.C. § 1106(b)(1), which provides as follows:

> A fiduciary with respect to a plan shall not--

> (1) deal with the assets of the plan in his own interest or for his own account. . . .

29 U.S.C. § 1106(b)(1). This provision is described as imposing a duty on an ERISA fiduciary not to engage in self-dealing. *See, e.g., Martin v. Feilen*, 965 F.2d 660, 665 (8th Cir. 1992) (explaining that ERISA has "strict prohibitions against dealing with a party in interest, and against self-dealing, that is, 'deal[ing] with the assets of the plan in his own interest or for his own account'" (citing 29 U.S.C. § 1106(b)(1) and 29 C.F.R. § 2550.408e(a)). Rozo alleges that Principal violated this provision, because it dealt with the PFIO contract, a plan asset, in its own interest by setting the CCR to achieve Principal's profit objectives rather than to pay maximum returns to participants.

Under Eighth Circuit law, ERISA § 408(c)(2), codified at 29 U.S.C. § 1108(c)(2), provides a "reasonable compensation" affirmative defense to this claim, because this provision states that "[n]othing in section 1106 of this title shall be construed to prohibit any fiduciary from . . . receiving any reasonable compensation for services rendered . . . in the performance of his duties with the plan." *See Harley v. Minnesota Min. & Mfg. Co.*, 284 F.3d 901, 908-09 (8th Cir. 2002) (holding that this provision applies to § 1106(b)(1)).[4] Thus, even if the court were to find that Principal engaged in self-dealing when it set the CCR, Principal could still prevail by showing that it received only "reasonable compensation."

Rozo's claim of self-dealing and his response to Principal's reasonable compensation defense to that claim again focuses entirely on whether the CCR paid to

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[4] The Eighth Circuit Court of Appeals explained,

> [T]he general prohibition in § 1106(b)(1)—that a fiduciary should not deal in plan assets for its own account—is alleged to have been violated when a fiduciary influenced its own compensation for investment services. At least in this situation, the plain language of § 1108(c)(2) sensibly insulates the fiduciary from liability if the compensation paid was reasonable.

Harley, 284 F.3d at 909.

participants was as high as Rozo contends it should have been. This claim, like his disloyalty claim in Count I, relies on a hindsight analysis of the deducts Principal made to determine the GIRs and, hence, the CCR, rather than on challenges to the actuarial predictions that Principal made when setting each GIR and the CCR.

1. Self-dealing

Rozo argues that, because the PFIO is an asset of the plan, the evidence that Principal set the CCR for the PFIO in its own interest establishes that Principal violated ERISA § 406(b)(1). Principal notes that Rozo has not cited any authority holding that a service provider engages in a prohibited transaction merely by setting the rates for a guaranteed insurance product like the PFIO. Furthermore, Principal argues that it sought to set the GIRs and CCRs at levels that would benefit participants, frequently went out of its way to change its approach to the deducts in ways that directly benefited participants, and has found ways to steadily reduce the sum of the deducts by more than 33% over the course of the class period.

For the reasons stated, above, in the analysis of Count I, the court reiterates that Principal's motivation was, indeed, to set the best rate that Principal could for participants while also appropriately accounting for Principal's anticipated costs and risks, to ensure Principal could make good on its obligation to pay participants the PFIO's guaranteed rate regardless of future market conditions. Also, for the reasons discussed, above, in § I.B.2.b., the evidence also establishes that the challenged deducts were set to address reasonable expenses of the plan, not for the purpose of enriching Principal at the participants' expense. Thus, the court finds that Principal's setting of the CCR was not dealing with the assets of the plan in Principal's own interest or for its own account. 29 U.S.C. § 1106(b)(1).

Thus, Rozo's self-dealing claim in Count II of his Complaint fails on the first step in the analysis of that claim.

2. Reasonable compensation

The court will consider Principal's affirmative defense of "reasonable compensation," under ERISA § 408(c)(2), codified at 29 U.S.C. § 1108(c)(2), and *Harley*, 284 F.3d at 908-09, assuming for the sake of argument—and contrary to the finding, just above—that Rozo could establish self-dealing on Principal's part. When offering an insurance product for inclusion in a sponsor's pension plan, the insurance company is unquestionably entitled to a reasonable profit, even though it is a fiduciary. But how is the reasonableness of that profit determined? Can the insurance company be assured that its profit is reasonable if it is derived from the application of sound actuarial principles? Is it appropriate to characterize the risk to Principal associated with the product using the matrix demanded by regulators such as a state insurance commissioner or the NAIC? And does the offering of this product at an interest rate that is competitive in the marketplace provide assurance that the profit obtained by the insurance company in doing so is reasonable? These and other questions are hotly disputed by the parties as are the assumptions behind the questions themselves.

a. Proxies for reasonable profit

First, the court finds that the product at issue in this case was offered at a competitive interest rate. More specifically, during the class period, the fixed rate of return that participants in the PFIO are guaranteed to receive—the CCR—was fixed for six months after it went into effect. Rozo, and presumably the rest of the class as well, purchased the PFIO product because of the assurance of a specified interest rate to be paid while protecting the participants' pension assets during troubled financial times experienced during the class period. The interest rate was derived using sound actuarial principles. In fact, no actuary questioned the application of these principles and no criticism was done on an actuarial basis. It was reasonable for Principal to price the product using the standards demanded by insurance regulators. Doing so enhanced the security, and therefore the value, of the product to the participants. Finally, Rozo's criticism of the product and its proposed pricing formula yields an interest rate for plan participants that is simply not available in the marketplace for plan participants desiring the features of the product at issue herein—such as low risk, protection of principal, and a fixed return. Accordingly, the evidence showed that the payment of a competitive interest rate is a reasonable proxy for the reasonableness of Principal's profit.

b. The existence of a competitive market

During the course of the trial, the parties litigated the existence and significance of the competitive marketplace for the PFIO on the issue of the reasonableness of Principal's profit. Rozo focused on pension plans such as his, the attributes of the PFIO, and other factors to suggest that there is no competitive market for the PFIO. Sometimes it appeared as though Rozo contended that his portfolio was the market, sometimes it appeared that Rozo contended that his plan was the market, and other times it appeared that he contended that the relevant market could only be for products with precisely the same features as the PFIO. Rozo argued that Principal's allegedly high profit margin on the PFIO, the fact that you can only buy it if it is offered in your pension plan, the barriers to entry in the marketplace (it takes tens or hundreds of millions of dollars to offer such a product), the barriers to withdrawing from the PFIO (a 12-month put or 5% charge for plans to withdraw and a 90-day "equity wash" for participants before they could invest in a competing product), and the imbalance of information (plan participants and plan sponsors do not know Principal's income or the deducts it uses to determine the interest rate for participants) all suggest that the PFIO is not a part of a competitive marketplace.

The court finds, however, that the marketplace for pension fund investment options is huge and robust, as consumers such as Rozo have seemingly endless options for ways to save for retirement and provide income and growth. Within that market is another huge and robust marketplace for fixed income contracts such as the PFIO. Rozo himself demonstrated that the PFIO does not just compete against other fixed income pension products, but against other products available in a particular pension plan. This is so, because following the great financial crisis of 2008, Rozo increased the percentage of his portfolio that was invested in the PFIO from 45% to 80%. He did so precisely for the reasons that the PFIO was offered—stability, preservation of principal, and guaranteed return—and because it outperformed all of his other investments.

c. Reasonableness of the deducts

The court found, above, in its discussion of setting the GIR, *see, supra*, § I.B.2.b., that each of the deducts used to determine the GIRs and, hence, the CCR for the PFIO, was reasonable. This was so, because of the process, including actuarial processes, and the information that Principal used to set the deducts.

Not only did Principal use a meticulous process to set the deducts, the PFIO's resulting CCRs were on par with the rates of return for guaranteed return products offered during the class period that Principal considered to be competitors. Although Rozo contends that there is only one exhibit reflecting purported competitors' rates of return in the record, there is also evidence that Principal's actuaries and analysts considered and discussed information regarding competitor products, their features, and their rates during the PFIO rate-setting process. Individuals from Principal's Products Area team and Fixed Income Management team, such as Aaron Friedman and Melanie Fopma, provided and discussed information about competitors' products during PFIO-related meetings. Information about competitors' products (both features and rates) came from sources such as fact sheets, information from plan advisors or contacts within the industry, marketing materials, and copies of contracts. Contrary to Rozo's contentions, the court finds that the rates of return for competitive products are meaningful benchmarks for the PFIO's CCR, because other insurance companies generally invest in the same types and allocation of assets as Principal.

External market benchmarks of the market risks Principal faced confirm that Principal's risk evaluation and rate-setting process yielded appropriate and reasonable deducts. In particular, the total amount of the deducts was highly correlated with the CBOE

Volatility Index (VIX index), a commonly used measure of the market's expectation of long-term market volatility risks. Principal's expert, Dr. Craig Merrill, compared the total amount of the deducts to the VIX index over a 10-year period and determined that the deducts had more than a 75% correlation to the VIX index. A 100% correlation would mean that the deducts were perfectly correlated; in the words of Dr. Merrill, a 75% correlation indicated that "the deduct setting methodology for the total deducts that Principal has used is, in fact, connected to perceptions of risk then current in the marketplace as those deducts were being set." 11/9/20 Tr. 914:4–9 (Merrill's testimony); *see also* Ex. 790. Again, contrary to Rozo's contentions, the court finds these external market benchmarks to be relevant.

Therefore, even if Rozo could establish self-dealing in violation of ERISA § 406(b)(1)—and the court found he could not—the court finds in Principal's favor on its "reasonable compensation" defense pursuant to ERISA § 408(c)(2) to that claim. The court finds in favor of Principal and against Rozo on Rozo's claim of breach of the ERISA fiduciary duty to refrain from self-dealing in Count II of Rozo's Complaint.

III. CONCLUSION

Upon the foregoing,

IT IS ORDERED that the court finds in favor of Principal Life Insurance Company and against Frederick Rozo on each of the claims presented.

JUDGMENT SHALL ENTER ACCORDINGLY.

DATED this 8th day of April, 2021.

JOHN A. JARVEY, Chief Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA