



Testimony of Jim Poolman
on behalf of
The Indexed Annuity Leadership Council
before
The Department of Labor

August 12, 2015

Thank you for the opportunity to testify today. My name is Jim Poolman and I am the Executive Director of the Indexed Annuity Leadership Council (IALC), a consortium of life insurance companies that offer fixed indexed annuities or “FIAs”. Established in 2011, the IALC educates consumers, the media, regulators and industry professionals about FIAs. IALC companies today have more than 1.3 million policies in force with more than \$84 billion in assets.

At the outset I want to recognize the thousands of insurance agents who sell fixed annuities – including FIA’s – and who work hard every day to provide principle protection and guaranteed income to consumers. Extending a legal fiduciary standard to their conduct will reinforce what is already largely true today --- in almost every case these hard working men and women work to advance the best interests of their customers. But the details of the DOL final rule will make the difference between a standard that reinforces that desired conduct, and one that impedes the ability of insurance agents to help consumers navigate important retirement planning decisions.

Fixed annuities, including FIA’s, have been used by consumers for many years as part of well-balanced financial plans and as a way to provide guaranteed income for life. The only significant difference between an FIA and other fixed annuities is the formula for computing interest earnings credited to the policy – the FIA references a market index for that purpose, instead of a periodically declared or fixed rate. As is the case with other fixed annuities, FIA’s do not assess sales charges, they are supported by the general investment account of the insurer, principal is protected from market downturns; they are regulated as insurance under state insurance laws, and they are sold only by state licensed insurance agents. While sometimes these agents are also registered investment advisors or registered representatives of a broker-dealer, the majority are independent insurance agents selling only insurance products.

The IALC appreciates the Department retaining PTE 84-24 to provide an exemption from the prohibited transaction rules for insurance agents who sell fixed annuities for the purpose of preserving the traditional commission form of compensation. Unlike the proposed new Best Interest Contract Exemption (BICE), 84-24 reflects the dominance of independent insurance agents who sell these products and who typically do not offer other financial products. It also reflects the absence of sales charges assessed to policyholders purchasing fixed annuities and the reliance on insurance commissions as the form of remuneration to the insurance agent. 84-24 is structured

with the intention of making available financial advice that is in the consumer's best interest notwithstanding the payment of commissions by third parties.

Our comment letter offers several suggestions to modify the language of 84-24, some of which are technical and clarifying in nature. While not enumerating them all today, each is nonetheless important to make the rule work as intended. I will mention just a few of the substantive areas that we urge the Department to address in the final PTE.

The first issue, the definition of "insurance commission," has three distinct problems:

- One, it seems to require payments directly from an insurance company to the insurance agent. However, commissions may be paid to an insurance agent by a broker-dealer with whom the agent is a registered representative or by an Independent Marketing Organization (IMO) with which the agent is contracted;
- Two, using the term "sales commission" to define "insurance commission" is too vague to be useful; and
- Three, the complete elimination of marketing payments will impair the ability of insurers to support activities that are important to the distribution process.

Our comment letter suggests addressing these concerns by defining "insurance commission" as all taxable income. We suggest including sales incentives and marketing payments only to the extent that they are based on total aggregate sales.

The complete elimination of these payments is unnecessary to minimize the risk that an insurance agent might be motivated to recommend a specific product on the basis of a potential payment rather than what is in the best interest of the customer. This risk can be addressed by preventing such payments when they are tied to a specific product, yet still permitting them when they are paid on the basis of total aggregate sales.

Why do they need to be preserved?

Because these payments support activities that are important components of the distribution process. For example, the elimination of marketing payments to agents would be a disservice to consumers as it is the advertising by agents that actually brings greater awareness to consumers about the financial products available, the companies that provide them, and how consumers can obtain them.

The second issue-- one of the conditions of the PTE is that the insurance agent not be paid amounts that are in excess of "reasonable compensation." We believe that it is important to have a very clear definition of "reasonable compensation" to be able to comply. We urge the Department to adjust the definition to be clearer. Specifically we urge the adoption of a safe harbor -- a standard used in the regulations under ERISA section 408(c)(2) (a section that allows fiduciaries to receive reasonable compensation for services). That regulation defines as reasonable "such amount as would ordinarily be paid for like services by like enterprises under like circumstances."

The third issue-- the PTE requires the insurance agent to disclose the insurance commission to the customer "expressed as a percentage of gross annual premium payments" that is "paid by the

insurance company to the agent ...” As drafted this requirement raises two concerns: some forms of commission may not be easily described as a percentage of premiums, for example health insurance or retirement benefits earned by the insurance agent; and as I described earlier sometimes such payments are made by entities other than the insurance company. Therefore, we urge the Department to clarify that the disclosure applies to commissions received without reference to the entity making the payment, and that the disclosure be expressed as a percentage of premiums to the extent feasible, and otherwise as a dollar figure with any applicable conditions and limitations explained. Our recommendations further the purpose of the PTE by ensuring fulsome disclosures of commission payments.

With respect to the fiduciary rule itself, we urge the Department to add a seventh carve-out to clarify that an insurance company does not become a fiduciary when assisting agents in communicating with their clients by providing an illustration or quote. Illustrations can be important tools for agents to help customers understand how a fixed annuity works. Similarly, providing a quote to an agent should not somehow heighten the legal obligations of an insurance company. Our suggested carve-out applies to those illustrations that are intended to comply with the relevant NAIC Model Regulation governing illustrations.

In conclusion, we have attempted in our comment letter and in today’s testimony to suggest constructive changes to the proposed rule and PTE 84-24 that are not intended to undermine the Department’s objectives. We hope that a final rule will balance the Department’s desire to expand the application of ERISA’s fiduciary rule with the need to maintain a vibrant distribution system of financial products for retirement savings.

We believe that the thousands of insurance agents who will be subject to the best interest standard deserve standards that are transparent and fair so that they can continue to serve the best interest of their consumers. We appreciate the hard work that the Department has invested in this initiative and the courtesies it has extended to so many of us. We look forward to continuing to work with the Department as it modifies its proposals so that they will ultimately serve the best interest of all consumers.