



March 16, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, D.C. 20210

Subject: Fiduciary Rule Examination
(RIN 1210-AB79)

The Indexed Annuity Leadership Council (IALC) appreciates the opportunity to comment on the proposed rule extending the applicability date of the definition of “fiduciary” and the related prohibited transaction exemptions (PTEs) under the Employee Retirement Security Act (ERISA) and the Internal Revenue Code published in the Federal Register on March 2, 2017.

The IALC is a consortium of life insurance companies¹ that offer fixed indexed annuities (FIAs). IALC was established in 2011 with a mission to educate the public (including regulators) about the benefits of FIAs, which offer principal protection and a predictable, guaranteed retirement income, and can contribute balance to retirement savers’ long-term financial plans. Today there are more than \$330 billion in FIA policies outstanding. The majority of the \$61 billion in annual sales of FIAs are purchased by retirement savers in transactions that would be covered by the new fiduciary rule and related PTEs.

IALC member companies believe that it is critically important for retirement savers to have access to a host of financial products so that a financial adviser can recommend a retirement savings strategy that serves each client’s best interest. In certain circumstances, an FIA is the product that best serves a client’s interest and therefore maintaining access to these annuity products promotes the Department’s goal of protecting retirement savers. Annuities are already subject to extensive state insurance regulation. The Department’s fiduciary rule and PTE structure, however, add unnecessary cost and complexity to the existing scheme of annuity regulation—costs and complexity that will ultimately harm retirement savers. It is vitally important, therefore, that the Department carefully reconsiders the fiduciary definition and related PTEs to ensure that they in fact serve the Department’s stated objectives.

The IALC believes the questions posed by the Presidential Memorandum on the Fiduciary Rule and the Department regarding the impacts of the fiduciary definition and related PTEs

¹ American Equity Investment Life Insurance Company, Midland National Life Insurance Company, National Life Group, North American Company for Life and Health, Life Insurance Company of the Southwest.

underscore the importance of determining whether these new rules will actually ensure that retirement savers receive the best advice. Extending the implementation date by another 60 days in order to allow the Department to solicit responses to the numerous questions that are posed is a reasonable approach, with 60 days being the bare minimum amount of additional time that may be needed for review. Given the dramatic impact that the fiduciary rule is having on the financial services industry,² the short implementation period (which is inadequate and inconsistent with precedent),³ the on-going litigation,⁴ and the general confusion regarding compliance due to the lack of guidance,⁵ 60 days likely will in fact not be nearly long enough to make certain that the fiduciary rule and related PTEs operate in accordance with the Department's goal of protecting retirement savers.

One example of the Department's need to extend the implementation date is the lack of a final PTE for insurance intermediaries. As our comment letter of February 17, 2017 on the proposed Best Interest Contract Exemption for Insurance Intermediaries noted, the majority of FIAs offered by IALC members are sold by independent insurance agents who work through independent marketing organizations (IMOs). IALC members, like other insurance companies, frequently contract with IMOs to distribute their products through an IMO's independent insurance agents. These IMOs and their insurance agents typically sell annuity products offered by more than one insurance company. Yet, at this late date, insurers, IMOs and independent agents still do not know what the actual requirements and contours of a PTE for IMOs will be. They thus do not know what steps they need to take to take advantage of this PTE or what the costs of doing so will be.

The Department appears currently to be lacking sufficient information to make an informed decision on how to address these concerns given the host of questions regarding the structure of FIAs posed in the proposed insurance intermediary PTE. For example, questions exist regarding basic product design such as caps, spreads, and participation rates. It is clear from the Department's proposed exemption that it needs more time to understand how to structure an appropriate exemption for IMOs offering FIAs and other products.

Extending the applicability date, either for the proposed 60-day period or for a longer period of time, is fully cost-justified.⁶ Although the notice included statements concerning the supposed cost of delay, those statements were predicated on the Department's flawed analysis of the supposed benefits of the rule - one of the very flaws that justify reconsideration of the rule. In fact the Department is not yet in a position to describe the costs or benefits of a postponement given the Presidential Memorandum requiring the Department to prepare an updated economic analysis concerning the likely impact of the fiduciary rule, an analysis that is not yet complete.

² Goldman Sachs estimated that initial compliance with the Fiduciary Rule would cost the financial services industry \$14 billion and on-going annual compliance would cost it \$7 billion.

³ The Department provided the financial services industry only 12 months to implement the complex Fiduciary Rule, while providing a two year implementation for the much simpler section 408(b)(2) regulations.

⁴ Seven lawsuits against the Department related to the Fiduciary Rule are currently pending or on appeal in U.S. courts.

⁵ Although the Fiduciary Rule was published by the Department of Labor on April 6, 2016, the Department did not issue any interpretative guidance until October 2016 and January 2017.

⁶ In defending the current rules, the Department has contended that the APA "does not require a detailed cost-benefit analysis." *Chamber of Commerce v. Dep't of Labor*, No. 3:16-cv-01476, Doc. 72-1 at 56 n.58 (N.D. Tex. filed August 22, 2016). If the rules themselves did not require detailed cost-benefit analysis, then neither does an extension of the applicability date.

In the case of FIAs, there is no reason to believe that extending the applicability date will harm retirement savers. FIA sales are already subject to robust consumer protections under state law, including extensive disclosure requirements and a requirement that the annuity be suitable in light of the consumer's age, income, intended use of the FIA, assets and liquid net worth, financial needs and experience, financial time horizon, liquidity needs, risk tolerance, and tax status.

In conclusion, the Department should extend the applicability date of the fiduciary rule and related PTEs for a minimum of 60 days to allow all stakeholders to provide the information the Department lacks to make certain the fiduciary rule and related PTEs work as intended – to protect the interests of all retirement savers.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Poolman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jim Poolman, Executive Director