



July 21, 2017

Office of Exemption Determinations
Employee Benefit Security Administration
Attention: D-11933
U.S. Department of Labor
200 Constitution Avenue, NW, Suite 400
Washington DC 20210

Subject: Request for Information (RFI) Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (RIN 1210-AB82); RFI Question 1

The Indexed Annuity Leadership Council¹ (IALC) appreciates the opportunity to respond to the RFI published July 6, 2017 in the Federal Register requesting comments on potentially delaying the January 1, 2018 applicability date for the Best Interest Contraction Exemption (BICE) and amendments to Prohibited Transaction Exemption (PTE) 84-24. The IALC opposes the current construct of the rule and is opposing it in on-going litigation, and it believes a delay beyond January 1, 2018, is critical to protect the interests of and mitigate damage to all persons involved.

If the Department fails to delay and substantively amend the rule, American retirement savers could lose access to products that are in their best interest at a time when they face their greatest need for long-term financial products. In addition, companies will waste money and resources as they attempt to design new products and implement policies, procedures, and compliance systems to comply with rules that could change depending on the Department's review of the rule.

For the reasons set forth below, the IALC encourages the Department to delay the applicability date of the additional requirements of the Fiduciary Rule until at least January 1, 2019. American retirees will be best served by the Department completing its review of the Fiduciary Rule and PTEs, and working to address the concerns and suggestions it receives from the public. Retirement savers deserve no less.

Would a delay in the January 1, 2018, applicability date of the provisions in the BIC Exemption, Principal Transactions Exemption and amendments to PTE 84-24 reduce

¹ The IALC is a consortium of life insurance companies that offer fixed indexed annuities (FIAs) and is comprised of Allianz Life Insurance Company of North America, American Equity Investment Life Insurance Company, Athene Annuity and Life Company, Life Insurance Company of the Southwest, Midland National Life Insurance Company, National Life Insurance Company, and North American Company for Life and Health. The 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.

burdens on financial services providers and benefit retirement investors by allowing for more efficient implementation responsive to recent market developments?

The IALC believes a delay is critical to protect the best interests of retirement investors and enable financial service providers to comply with appropriately structured PTEs.

Consistent with the Presidential Memorandum issued February 3, 2017², the Department is reviewing the Fiduciary Rule and related PTEs to determine if changes are necessary to prevent harm to investors due to a reduction in access to retirement savings offerings and related financial advice. Because of this ongoing review, the market is uncertain if the Department will adopt any changes to the PTEs and if so, what new processes and procedures need to be established in order to comply. As the Department is aware, policy and procedure changes are time-consuming and expensive to adopt and implement. As the Department reviews and considers the public comments, both through the RFI responses and the comments sought regarding the President's Memorandum, it is appropriate to delay the January 1, 2018 implementation date.

Most importantly, the January 1, 2018 implementation date should be extended to prevent retirement savers from losing access to a broad choice of financial products that are routinely in their best interest to purchase. As many commenters have pointed out, the PTEs as currently structured may increase fees attached to certain products, eliminate feeless features, and force service providers to withhold certain products that may serve retirement savers' best interest. For example, our letter dated April 17, 2017 describes how many IRA holders may be unable to purchase fixed indexed annuities (FIAs) and documented that losing access could cost IRA holders as much as \$10.8 billion in lost earnings over a 10-year period and as much as \$55.3 billion over a 20-year period. Indeed, we agree with the Department that retirement savers deserve financial advice that is in their best interest, but they also deserve access to a broad range of products that best address their retirement savings goals and objectives. These should not be mutually exclusive propositions. Unfortunately, the current PTE structures fail to strike the proper balance between consumer protection and allowing manufacturers to distribute a range of products to meet customer needs.

It is not only the public and financial service providers who are raising concerns about shortcomings in the current Fiduciary Rule and related PTEs. The Department itself recognizes the current narrow definition of "financial institution" in the BICE may undermine a large portion of the distribution channel for certain annuity products such as FIAs. It has responded to this problem by publishing a new proposal admitting its confusion concerning the distribution network for such products, but recognizing that changes need to be made to preserve access to products such as FIAs.³ Again, to protect the best interest of retirement savers the Department should extend the deadline for compliance with the PTEs until it can finalize an approach to address these shortcomings.

² Fiduciary Duty Rule Memorandum, 82 Fed. Reg. 9675 (Feb. 7, 2017) (the "President's Memorandum").

³ Proposed Best Interest Contract Exemption for Insurance Intermediaries, 82 Fed. Reg. 7336 (January 19, 2017).

The IALC will be responding to RFI Questions 2-18 under separate cover and will provide additional information and analysis regarding this issue, which we hope the Department considers as it reviews and potentially revises the BICE and PTE 84-24.

Would delay carry any risk?

A further delay would not carry any significant risk to retirement savers because the impartial conduct standards are already applicable to advisers offering financial products to retirement savers. These provisions adequately protect retirement savers by imposing a high standard of conduct on advisers. In addition, an adviser who engages in a prohibited transaction must still rely on the terms and conditions of a PTE.

PTE 84-24 has served that purpose well for more than two decades. The addition of the impartial conduct standards to PTE 84-24 has potentially accomplished the Department's stated goals, and may serve as the correct PTE going forward for these products. While there would be no harm resulting from a delay, a delay would give the Department the necessary time to gauge how PTE 84-24 (with impartial conduct standards) is functioning in the marketplace, and further determine what, if any, changes to PTE 84-24 may be appropriate to avoid unintended negative consequences for retirement savers. On the other hand, a failure to delay the implementation date carries significant risk that retirement savers will be harmed through loss of beneficial products and potentially higher fees, as discussed above.

Would a delay otherwise be advantageous to advisers or investors?

A delay of the implementation date will offer the Department an opportunity to assess how the expanded definition of fiduciary and the impartial conduct standards that became effective June 9, 2017 are working in the marketplace. The delay will also provide necessary time for the Department to discuss with the National Association of Insurance Commissioners (NAIC) and the Securities and Exchange Commission (SEC) uniform approaches to implementing impartial conduct standards that apply more uniformly across products and distribution channels. Providing time for this assessment and collaboration may result in a more effective and efficient regulatory framework for retirement investors and advisers. A delay will also offer additional time for the Department to undertake its review consistent with the President's Memorandum of February 3, 2017. At a time when products offering lifetime income options should be encouraged, it is inadvisable to rush implementation of rules that will likely reduce the availability of these products and access to advisers.

What costs and benefits would be associated with such a delay?

Because the Department is still conducting its review of the Rule, retirement investors and financial service providers are uncertain and confused about the regulatory regime that applies. Financial service providers should not be asked to invest millions of dollars to develop and implement compliance systems when the Department may revise the rules as a result of its review. Given this RFI and the other requests for comments issued since the rule and PTEs were published in the Federal Register on April 8, 2016, it is clear the Department is still examining the legitimate concerns raised by nearly all stakeholders. The cost of implementing a defective set of rules is significantly greater than any potential

benefit of rushing to a quick implementation date. This is especially true because the impartial conduct standards are currently protecting retirement savers. In addition, the Fiduciary Rule continues to be the subject of pending litigation. It is appropriate for the Department to allow all legal challenges to be fully litigated before additional requirements are put in place that may ultimately be reversed or altered by the outcome of this litigation. To do otherwise risks creating additional confusion for retirement savers and advisers and unnecessary expenditure of substantial resources by the financial services industry.

We appreciate the Department's time and attention, and we look forward to submitting a subsequent letter addressing the additional questions posed in the RFI.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Poolman". The signature is written in black ink and is centered on the page.

Jim Poolman, Executive Director