ACLI
Financial Security…for Life.

James Szostek
Vice President, Taxes & Retirement Security
(202) 624-2378 t (866) 953-4149 f jimszostek@acli.com

Howard Bard
Vice President, Taxes & Retirement Security
(202) 624-2028 t (866) 953-4149 f howardbard@acli.com

February 17, 2017

Submitted Electronically to e-OED@dol.gov

Office of Exemptions Determinations
Employee Benefits Security Administration (Attention: D-11926)
U.S. Department of Labor
200 Constitution Avenue N.W.
Suite 400
Washington, DC 20210

Subject: Proposed Best Interest Contract Exemption for Insurance Intermediaries (ZRIN 1210-ZA26)

Greetings:

On behalf of the American Council of Life Insurers ("ACLI")[1], we offer comment on the Department of Labor's ("Department") proposed prohibited transaction exemption for insurance intermediaries issued on January 19, 2017. The Department proposes this exemption in connection with its final *Definition of the Term "Fiduciary"; Conflict of Interest Rule–Retirement Investment Advice* ("Fiduciary Regulation"), published in the *Federal Register* on April 8, 2016.

ACLI and its members strongly support a standard of care under which financial professionals are required to act in the best interest of consumers. However, with so many Americans reaching retirement age each day and given the decline of traditional employer-sponsored pension plans, now more than ever, seniors need the income protection available in annuities and other guaranteed lifetime income products offered by America's life insurance industry. Many people first learn of the benefits of annuities from a life insurance agent or broker. It is critical that consumers have continued access to information and education regarding annuities. Yet DOL's Fiduciary Regulation will have a negative

[1] The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with 290 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 94 percent of industry assets and premiums. ACLI member companies offer insurance contracts and other investment products and services to qualified retirement plans, including defined benefit pension and 401(k) arrangements, and to individuals through individual retirement arrangements (IRAs) or on a non-qualified basis. ACLI member companies also are employer sponsors of retirement plans for their own employees.

impact on those it is purportedly designed to protect. It will cause irreparable harm to small balance retirement plan investors, including many middle and lower income investors, by effectively limiting or denying access to guaranteed income products that are increasingly important to millions of Americans who no longer have access to a traditional pension.

On April 8, 2016, when the Department published the final Fiduciary Regulation in the *Federal Register,* it also published amendments to Prohibited Transaction Exemption 84-24 that exclude specific forms of annuities. Thus, the Department abandoned its long-standing support for a single uniform prohibited transaction exemption for annuities and did so in a way that now leads to this 11th hour proposed exemption for Insurance Intermediaries (the "Proposed Exemption"). The Department should take immediate steps to re-establish exemptive relief under Prohibited Transaction Exemption 84-24 for transactions involving any annuity contract.

With the April 10, 2017 applicability date for the Fiduciary Regulation fast approaching, there is not sufficient time for the Department to finalize the Proposed Exemption and for these insurance intermediaries to act to conform to the requirements of any final exemption. Absent an immediate and sufficient delay in the applicability date, the Department's actions on the Proposed Exemption jeopardize access to important guaranteed lifetime income protections, particularly through insurance intermediaries. ACLI requests the Department act as soon as practicable to extend the applicability date of the Fiduciary Regulation to provide sufficient time for a thorough and thoughtful review by the Administration of the Fiduciary Regulation, the amendments to Prohibited Transaction Exemption 84-24 and the efficacy of the Proposed Exemption.

This recommended action would be consistent with (i) President Trump's February 3rd memorandum to the Secretary of Labor directing the Department to examine the Fiduciary Regulation to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice, and (ii) the Department's February 3rd statement that it will now consider its legal options to delay the applicability date as it complies with the President's memorandum.

****

On behalf of the ACLI member companies, thank you for consideration of these comments. We welcome the opportunity to discuss these comments and engage in productive dialogue with the Department on this Proposal.

Respectfully,

James H. Szostek　　　　　　　　　　Howard M. Bard