



February 21, 2017

Mailed Electronically: e-ORI@dol.gov

Office of Exemption Determinations
Employee Benefits Security Administration
Attn: D-11926
US Department of Labor
200 Constitution Avenue NW, Suite 400
Washington, DC 20210

**RE: Comments on the Department of Labor's Proposed
Best Interest Contract Exemption for Insurance Intermediaries (ZRIN 1210-ZA26)**

Greetings:

Standard Insurance Company ("Standard") appreciates the opportunity to comment on the proposed Best Interest Contract Exemption for Insurance Intermediaries (the "Proposed PTE").

Standard is an Oregon-based insurance company with a national presence. Through its affiliates and subsidiaries, Standard provides a number of different financial services, including group and individual insurance products, retirement plans services and individual annuities.

Standard offers fixed annuity products, including fixed indexed annuities, through independent marketing organizations, banks, broker dealers, registered investment advisers and other financial institutions. 100% of Standard's individual annuity business is sold through independent marketing organizations ("IMOs"). 30% of that business is sold by independent insurance agents who have no association with a bank or broker dealer, and thus would be looking to their IMO to act as their supervising financial institution. For that reason we wish to comment on certain aspects of the Proposed PTE.

As this comment letter is submitted, we recognize that President Trump has via Presidential Memorandum directed the Department of Labor to examine the pending Fiduciary Investment Advice regulation (the "Regulation") to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice.¹ We presume that the Proposed PTE would be a part of that review. Consequently, we will limit our comments to those aspects of the proposed PTE that are explicitly addressed by the Presidential Memorandum.

Specifically, the Presidential Memorandum asks whether (1) "the Fiduciary Duty Rule has harmed or is likely to harm investors due to a reduction of American's access to certain retirement savings offerings", and (2) "Whether the anticipated applicability of the Fiduciary Duty Rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees." Arguably, the very need for the Proposed PTE is on its face a demonstrable disruption

¹ Presidential Memorandum on Fiduciary Duty Rule, Feb 2, 2017.

within the retirement services industry, and one assumes the Department would not entertain issuing a PTE unless investors and retirees might be adversely impacted by inaction on this issue. More specifically, as explained below, we believe that, with respect to the Proposed PTE itself, the answer to both of the President's questions stated above would be "yes."

Insurers selling annuity products face market disruption, and consumers' access to annuities will be limited.

As the Department is aware, fixed annuities are the sole means available in the marketplace today through which retirees can supplement Social Security and secure additional income guaranteed to last throughout one's lifetime. Indeed, the Department is currently examining ways to promote the use of fixed annuities in qualified retirement plans in order to address retirees' longevity risk. Fixed indexed annuities are the most popular form of fixed annuities.² It is ironic, then, that through the Regulation and this Proposed PTE, the Department seeks to severely constrain one of the main distribution channels for fixed annuities, and particularly fixed indexed annuities.

IMOs account for more than half of the current \$60 billion fixed indexed annuity market.³ Should the Proposed PTE be implemented in its current unworkable form (discussed below), annuity products will surely face limitations not imposed on any other type of financial product, which is certainly one of the outcomes the President's Memorandum addresses.

Many IMOs will be eliminated as only the largest will satisfy the requirements, leading to market disruption and lack of access to annuities.

Standard is an insurance company that issues annuity products, not an IMO. Therefore we will not comment on the specific administrative challenges this Proposed PTE will present to IMOs. However, insurers' ability to distribute annuity products to consumers through IMOs will be greatly impacted by the threshold limitations imposed on IMOs in order to even take advantage of the Proposed PTE.

First, Section VIII (e)(4) specifies that in order to utilize the Proposed PTE, the IMO must have transacted sales of Fixed Annuity Contracts averaging at least \$1.5 billion in premium per fiscal year over its prior three fiscal years. The Department's stated rationale for imposing this onerous requirement is to identify insurance intermediaries that have the financial stability and operational capacity to implement the anti-conflict policies and procedures required by the exemption.⁴ However, the Regulation imposes no such requirement on the other approved financial institutions (banks, insurance companies, broker dealers and registered investment advisers). Likewise, the additional capitalization-like requirements of Section VIII (e)(3) (the maintenance of the aggregate of at least 1% of average annual premium sales or specialized insurance or both) are not imposed on either broker-dealers or investment advisers. As the Department is no doubt aware, mere size and financial resources are not a guarantee of an institution's compliance culture, and should not be a prerequisite to its ability to transact business in a manner beneficial to its clients.

Second, the \$1.5 billion premium threshold will severely limit the number of IMOs who will even be able to consider utilizing the Proposed PTE. There are approximately 350 IMOs nationwide,

² http://www.limra.com/Posts/PR/Data_Bank/_PDF/2016-Q3-Annuity-Estimates.aspx.

³ "IMOs Call DOL Fiduciary Exclusion Unworkable" by Cyril Touhy, *Insurancenewsnet.com*, Jan. 19, 2017.

⁴ *Federal Register*/Vol. 82, No. 12/Thursday, Jan. 19, 2017/Proposed Rules, page 7347, column 1.

but fewer than a dozen will meet the threshold.⁵ Indeed, of the 22 IMOs that filed applications for financial institution status with the DOL, only seven are eligible to qualify for the Proposed PTE.⁶ Obviously with such a severe contraction in the number of IMOs that can facilitate the sale of fixed indexed annuity products, annuities as a vital part of a retiree's ability to ensure his or her assets last through retirement will be adversely affected.

In its commentary on the proposed PTE, the Department hypothesizes that smaller IMOs could affiliate with larger IMOs that are capable of satisfying the size and capitalization requirements, and thus not be disrupted. But the reality is that the proposed PTE give the larger IMOs considerable market power to either eliminate smaller IMOs or buy them out at discounted values.⁷ Thus, the smaller IMOs, who represent the great majority of IMOs, would be disrupted.

The implementation timeline is unworkable and unreasonable.

The Regulation itself was published with an extraordinarily short compliance timeline for a regulation of its scope. The financial services industry was given a mere ten months to prepare for implementation. By contrast, prior regulations with similar or fewer structural changes, such as the fee disclosure regulations or the Form 5500 changes, allowed at least a one-year lead time. To compound matters for the annuity industry, this Proposed PTE was not published until 81 days prior to the April 10 effective date, and comments were not due until 48 days prior to the effective date. Still unknown is when the final PTE, on which IMOs may rely to begin their compliance efforts, will be issued. Even with the proposed transition relief provided through August 15, 2018, it seems apparent that annuity products will be at a severe disadvantage compared to other types of financial products, whose distribution channels face no such constraints.

For all the above reasons, we believe that the Proposed PTE will lead to constraints on consumers' ability to access critical retirement savings vehicles, and does not comport with the policies stated in the Presidential Memorandum, and therefore should be withdrawn or re-proposed in compliance with the stated policies.

We appreciate the opportunity to provide comments on the Proposed PTE. We are happy to answer any questions or to provide additional assistance to the Department.

Sincerely,



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⁵ "IMOs to DOL: Fiduciary rule class exemption sets too high a bar" by Warren S. Hersch, lifehealthpro.com, Jan 24, 2017.

⁶ "Super-IMOs Get 16-Months to Comply With DOL Rule For Exemption" by Cyril Tuohy, insurancenewsnet.com, Jan 24, 2017.

⁷ "FIA Distribution Could Turn into 'Monopoly'" by Cyril Tuohy, insurancenewsnet.com, Feb 10, 2017.