



SHURWEST

February 21, 2017

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

VIA EMAIL: e-oed@dol.gov

Re: Application No. ZRIN 1210-ZA26
Proposed Best Interest Contract Exemption for Insurance Intermediaries

Ladies & Gentlemen:

This letter is written on behalf of Shurwest, LLC (hereinafter “Shurwest”), an Insurance Intermediary and Independent Marketing Organization (“IMO”) based in Scottsdale, Arizona. Shurwest is hereby providing its comments to the Department of Labor’s (“DOL” or “Department”) Proposed Best Interest Contract Exemption for Insurance Intermediaries (“Proposed Exemption”).

Thank you for this opportunity to respond. Shurwest fully supports the **intent** of the Department’s Conflict of Interest Rule (“Rule”)—to act in the client’s best interest when providing advice relating to retirement assets. While we don’t provide retirement advice directly to clients or consumers, since our inception on May 8, 1992, it has been our goal to provide marketing support, assistance and quality information to our independent adviser partners about what we believe are superior retirement investment choices—choices which provide consumers with products backed by insurance company guarantees.

In fact, we are so passionate about this, that in our mission to deliver client-centric education, training and information about reliable retirement income products, our co-founder, Ron Shurts, has been involved at the highest levels of building, designing

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and improving the underlying financial structure of fixed indexed annuity (“FIA”) policies for the last 11 years.

From our perspective as a leading IMO, we believe that the Proposed Exemption places significant burdens upon all IMOs, to the extent that we believe the Proposed Exemption will have the **opposite** effect of its intention—actually reducing consumer choices and limiting advice—thereby harming the very consumers that the Department is seeking to protect.

For the reasons set forth below in this letter, we urge the Department of Labor to delay the applicability date of the existing Rule, to modify the Proposed Exemption to eliminate confusion and provide more detail for the industry, and ultimately, propose a revised Rule which maintains a fiduciary standard while better serving the needs of retirement investors.

Premium Threshold

Multiple Levels of Intermediaries

Shurwest believes that the minimum premium threshold of \$1.5 billion from sales of fixed annuity contracts as proposed by the Department is unreasonably high for IMOs. If an unreasonably high minimum sales threshold is used, it will create more IMO consolidation, layers and conflicts of interest, as well as reduce competition—to the **ultimate detriment of consumers**. While we agree that an IMO needs scale and operational capacity, a threshold of this magnitude will 1) force most IMOs to leave the business entirely, reducing competition and consumer access to the high-demand fixed indexed annuities, or 2) force them to partner with other IMOs that do not share the same consumer-focused values and/or rely on a multi-level marketing business model that we believe is not in the consumer’s best interest.

Shurwest believes premium volume should not be the only benchmark in determining financial viability, but should be considered in concert with an IMO’s business model, that includes processes, education and training support. **It is the business model that can help protect consumers, not sales volume.** It should be noted that Shurwest’s business model is **source-to-source**, with both insurance carriers and advisers.

We have **direct-to-source** contractual relationships with multiple insurance companies, which first of all means Shurwest is direct and does not sub-wholesale through other IMOs, which in turn allows us to receive extensive information and training directly from each carrier regarding their various products’ features, benefits, coverage—and, importantly—their exclusions. This is tremendously important because there are more than 400 different FIA policies available on the market today from multiple providers.

Our **direct-to-source** relationships with advisers allows us to subsequently **educate & train them**. Shurwest provides our advisers with the necessary infrastructure to compare 400+ policy features, benefits, exclusions and premium costs from multiple carriers—delivering them the background research, due diligence, education and training they need to confidently present the

retirement product recommendations that are both suitable and in the best interests of the consumer.

Shurwest's source-to-source business model is not the business model of all IMOs.

Some IMOs claim a higher premium/sales volume by adding layers of sub-wholesalers or sub-IMOs. We do not believe this multi-level marketing business model is in the best interest of the consumer because oversight is diluted and training is minimal. Sometimes the advisers providing consumers with retirement advice are two, three or even four layers below the IMO. Conflicting financial agendas can be extensive in this business model, given the many layers that need to be compensated, which often gets in the way of delivering impartial advice in the best interest of the consumer.

Without participation in layers (i.e., sub-wholesalers or sub-IMOs), Shurwest's annual sales exceed \$500,000,000. We believe that this premium volume, **along with our transparent business model**, represents a reasonable threshold and gives us the operational capacity to train and support our adviser partners so that their recommendations are in the best interest of the consumer.

Ability of Insurers to Change the Terms of the Fixed Indexed Annuity Contracts During the Term of the Contract, Particularly During the Surrender Period

Ability to Adjust Discretionary Non-guaranteed Elements

In its Proposed Exemption, the Department seeks comments on the ability of insurance companies to change the non-guaranteed terms of the fixed indexed annuity ("FIA") contract, and particularly the ability to change the terms during the surrender period.

This is of great concern to Shurwest as well, and is precisely what spurred our co-founder Ron Shurts on his 12-year quest to help develop the most consumer-friendly FIAs available on the market.

Although the ability to trigger contractual requirements is reserved solely for the insurance carriers and cannot be dictated by IMOs, Shurwest agrees with the Department's concern. Through our due diligence and product research, which provides feature, benefit, exclusions and price comparisons between the 400+ FIAs on the market, we help educate advisers about the contractual components of individual FIAs. We help advisers sift through the fine print of insurance contract language so they can narrow down and recommend FIAs which best serve their clients' needs.

Neither Shurwest nor any other IMO has any control over the product changes the Department is suggesting. Those decisions lie solely with each individual insurance carrier and are subject to the regulatory oversight of the state departments of insurance. As such, the insurance carriers are best suited to answer the questions raised in this portion of the Proposed Exemption.

It should be noted that this issue was not raised (nor is it required of) the Best Interest Contract Exemption (“BIC”) currently in place. If this element is a critical component to the rule, we believe it should be addressed in the BIC as opposed to the IMO Exemption or through some other process whereby the Department addresses this issue directly with insurance companies.

Insurance or Assets Set Aside for Potential Liability

Shurwest does not agree that the IMO Exemption should require a 1% set aside or insurance policy held based on sales volume. This arbitrary percentage, coupled with a \$1.5 billion sales requirement means that \$15 million dollars cash or unencumbered assets would have to be set aside, which is an unreasonable and arbitrary figure. Even if the sales volume requirement is lowered, the large set aside of 1% is unreasonable, and multi-million dollar E&O policies are likely not even available. Given that this is a low margin business, such a requirement could easily put many IMOs out of business, once again reducing the availability of desirable retirement investment options for consumers.

It is important to note that this percentage set-aside or insurance requirement is not placed upon other financial institutions—such as RIAs—under the Rule. The lack of rationale for imposing the standard makes it difficult to understand the intent behind this requirement for IMOs.

Additionally, it should also be noted that our independent agents are already currently required by most insurance carriers to carry E&O insurance in order to conduct business, and all securities-licensed representatives are required to carry such insurance. The \$1 million E&O insurance policy that Shurwest already has in place is just a double layer of protection on top of our agents’ and advisers’ requirements.

If the Department believes that insurance and/or an asset set aside is necessary, then the amount required should be reevaluated based on input from key IMOs like Shurwest. Shurwest would suggest the requirement be modified to be a reasonable amount, taking into account a number of factors including, but not limited to, sales volume, business model, client profile, claims history and number of independent advisers.

Definition of Financial Institution

Posting Independent Financial Audit on Firm Website

As a privately-held company, Shurwest works in concert with external CPAs for oversight of its financial statements.

We believe the Department’s requirement that a privately-held company disclose its financial information to the public at large (the vast majority of whom are not clients of the firm) by posting them on a public website does not provide any additional protection to retirement

investors. For privately-held IMO's, financial viability and transparency of financial information should be provided and determined at the DOL or state department of insurance level for regulation. Also, if publication is made to the public, a privately held IMO's proprietary financial information will be exposed to competitors without adequate justification. IMOs do not receive and retain capital like insurance carriers do, so public financial information is not useful like it is for insurance carriers in determining their claims-paying ability.

It should be noted that the Department did not make a similar requirement of other financial institutions under the existing Rule.

In the interest of supporting the intent of the Proposed Exemption, Shurwest would be willing to provide copies of its financial statements to the DOL or a state department of insurance (DOI). Overall, Shurwest believes that the oversight of financial statements should rest with the DOL or DOI and not with the general public or with plaintiffs' attorneys.

Definition of Financial Institution

Audit of Internal Controls

Shurwest supports reviews of internal controls as a means of establishing safeguards to protect consumers. With respect to this Internal Control requirement, and the aforementioned potential requirement for posting audited financial statements on the firm's website, Shurwest would like to work with the DOL to review overall financial statement and internal control review requirements, and the disclosure of that information, so that consumers are protected and reasonable requirements for privately held IMO's are put forth to the industry. Through this interactive engagement, we believe that we will be able to accomplish the DOL's overall objectives.

Marketing Material Review

Shurwest is concerned about the requirement in the Proposed Exemption that all marketing materials need to be reviewed in advance by the IMO. We believe that such a requirement that "all marketing material" be reviewed is impractical and appears contrary to the Department's intent of focusing on what is in the best interest of the retirement investor.

Furthermore, a clear delineation of **what constitutes educational material as opposed to what constitutes an investment recommendation** is of particular concern, given the Department's FAQs to the Rule that seems to indicate that a dinner seminar would be considered retirement advice rather than an educational event. There is no basis for this, in that no individual product is being recommended, and indeed, an adviser has not even met with a prospect to determine such prospect's goals, needs, history, family situation, time horizon and other factors.

These are practical issues for IMOs that have not been addressed sufficiently by the Department in their guidance to date.

Written Approval of Transactions

The requirement in the Proposed Exemption that IMOs approve transactions in writing beginning April 10, 2017 is both arbitrary and discriminatory and simply cannot be undertaken by the proposed date. *This requirement was not placed upon other financial institutions in the BIC under the Rule and it is unclear why it is being required only of IMOs.* This requirement adds additional compliance burdens with an extremely short timeline for implementation.

Had the Department provided clear and specific direction on the Proposed Exemption requirements earlier, IMOs would have had more of an opportunity to put additional systems in place to comply. It appears that the Department was in a rush to get this Proposed Exemption out the door without regard for the IMOs serving the needs of the retirement investors the Department is seeking to protect. Rather, this requirement will be detrimental to both the retirement investors and the advisers seeking to assist them with their retirement needs.

Disclosure Conditions

Shurwest believes that the NAIC Annuity Disclosure Model Regulation (“NAIC Regulation”) provides the appropriate framework whereby an adviser can deliver all of the appropriate and necessary information to retirement investors with respect to fixed annuity contracts. The information required in the NAIC Regulation provides everything a retirement investor needs to make an informed decision as to whether to purchase the product or not. The adequacy of these disclosures is evidenced in the relatively low number of complaints with respect to fixed annuity products nationwide to state insurance regulators.

IMOs do not have the ability to control which disclosures accompany the products. Product design and the accompanying disclosures are the sole responsibility of the insurance carriers, all of which must be submitted to each state DOI for approval prior to a product being available for sale. As such, Shurwest believes that this requirement would be better addressed in the BIC than in this Proposed Exemption, similar to the requirement concerning the change of product terms as was discussed above.

Conclusion

We appreciate the opportunity to comment on this Proposed Exemption. We have attempted to comment on the issues that we believe would have the most significant negative impact on retirement investors by limiting product choice and availability.

The issues we have highlighted in this comment letter are not exhaustive. We believe that there are substantial additional problems and issues which will arise if this Proposed Exemption is implemented in its current form. Accordingly, we strongly urge the Department to consider a delay of the entire Rule to ensure that systems are put into place appropriately to the benefit of retirement investors, whose best interests we've passionately served for the last two decades.

Shurwest would like to offer its 25+ years of experience as an IMO to assist the DOL with revising the Rule. We welcome the opportunity to work directly with the Department to provide input so that the final Rule represents best industry practices, promotes transparency, and includes practical and reasonable industry requirements to accomplish the overall objective of protecting retirement investors and consumers. Please contact me directly at (800) 440-1088.

Sincerely,



Ron Shurts, President

Jim Maschek, Vice President of Distribution