Crump®
Life Insurance Services

February 21, 2017

VIA CERTIFIED MAIL TO:
Office of Exemption Determinations
Employee Benefits Security Administration (Attention: D-11926)
U.S. Department of Labor
200 Constitution Ave. NW.
Suite 400
Washington, DC 20210

AND VIA ELECTRONIC MAIL TO: e-OED@dol.gov

RE: ZRIN 1210-ZA26
Proposed Best Interest Contract Exemption for Insurance Intermediaries

Ladies and Gentlemen:

Crump Life Insurance Services, Inc. ("Crump") welcomes the opportunity to share with the Department of Labor (the "Department") its comments on the Department's proposed Best Interest Contract Exemption for Insurance Intermediaries (the "Proposal" or the "Exemption," as context requires), which was published in the *Federal Register* on January 19, 2017.

Crump is an insurance brokerage general agency, and is one of the nation's largest and most prominent independent distributors of annuities and life insurance. Crump is a wholly-owned subsidiary of BB&T Insurance Holdings, Inc., the fifth largest insurance broker in the United States and the sixth largest in the world, which itself is a wholly-owned subsidiary of BB&T Corporation, one of the largest U.S. financial services holding companies, with $219.3 billion in client assets and market capitalization of $38.1 billion as of December 31, 2016.

As a threshold matter, we applaud the Department for the significant effort and time it has clearly expended in preparing and publishing the Proposal. We are encouraged by

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the Department's recognition of the vital importance that insurance intermediaries play in providing access to fixed-rate annuity contracts and fixed indexed annuity contracts to Retirement Investors who are in need of lifetime income-producing options to help ensure that their standards of living can be maintained during retirement, and particularly the services that insurance intermediaries provide to assist investors with understanding the choices available to them and selecting an annuity that is appropriate for each such investor's personal circumstances.

At the same time, we strenuously request that the Department work to expedite the final Exemption. Like other insurance intermediaries, Crump did not enter into an arrangement with another institution to serve as the "Financial Institution" for fixed indexed annuity sales under the Best Interest Contract Exemption in reliance on the expectation that it would be able to receive an individual exemption, which Crump applied for on November 22, 2016.

While we recognize that the Department may still consider individual exemption requests, with the shift of emphasis to the group exemption approach, Crump and other similarly-situated intermediaries will remain at a competitive disadvantage until we receive certainty as to the exemptive relief to be provided, and the Applicability Date (while it may likely now be delayed) continues to draw closer.

The Department has posited a number of times that insurance companies could act as Financial Institutions under the Best Interest Contract Exemption and delegate certain non-fiduciary distribution and compliance tasks by contract to insurance intermediaries in lieu of the insurance intermediaries themselves taking on the role of Financial Institution. From our extensive discussions with our insurance company partners, it is clear to Crump that most if not all insurance companies do not intend to become Financial Institutions or structure their relationships with insurance intermediaries in this way. In fact, Crump is receiving Financial Institution Due Diligence Questionnaires from its insurance company partners requiring identification of its Financial Institution.

Furthermore, when insurance intermediaries play the crucial role of helping independent agents make prudent product selections (for ultimate recommendation to Retirement Investors) from a broad marketplace of options, the agents who are receiving that guidance do not qualify as "independent plan fiduciaries with financial expertise" that otherwise would allow wholesalers to avoid a fiduciary role when advising those agents.

Because insurance intermediaries may be deemed to be giving fiduciary advice when providing recommendations to independent agents, it is particularly important that

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they be provided with a workable prohibited transaction exemption.[1] The complexity of fixed indexed annuities, in particular, makes the role of a wholesaler providing expert guidance on product features and selection crucial to providing the highest quality advice to Retirement Investors.

We fully support the Department with respect to most of the specific provisions in the Proposal. Just for example, the requirement that a certain (1% of premium levels) set-aside of unencumbered cash or cash equivalents, and/or fiduciary insurance in the same amount, is crucial in our view to ensure that IMOs maintain the financial resources to stand behind their recommendations and satisfy potential liabilities.

Below we discuss just those areas for which we believe some revisions and clarifications are necessary or appropriate. Our specific comments relate to the following general topics – these categories are presented in order of our view of their importance:

I. Premium Threshold
II. Audited Financial Statements
III. Marketing Materials and Disclosures
IV. Other Procedural Matters

We should note that some of our specific comments within the topic headings above relate to the Proposal's relief during the Transition Period. We appreciate the Department's efforts to provide the industry with transition relief by extending the deadline for certain requirements until August 15, 2018, but there are some facets of the Proposal for which no such relief is available, even though achieving compliance by the Applicability Date would not be feasible even with the best of efforts.

I. Premium Threshold

A. ***A Significant Premium Threshold is Appropriate, but $1.5 Billion as to Fixed-Rate and Fixed Indexed Annuities Only Is Excessive.*** As a general matter, Crump concurs with the policy underpinnings and concerns expressed by the Department in regard to the imposition of a significant "size threshold" for eligibility to act as a Financial Institution under the Proposal. As the Department explains in the Proposal's preamble:

[1] In this respect, when the Department re-examines its regulation defining the term "fiduciary" per the Presidential memorandum dated February 9, 2017, Crump would urge the Department to broaden the term "independent plan fiduciaries with financial expertise" to include advisers with applicable insurance licenses recommending appropriate insurance and annuity products, without requiring securities registration or affiliation with a (securities) broker-dealer or registered investment adviser.

> This proposed threshold is intended to identify insurance intermediaries that have the financial stability and operational capacity to implement the anti-conflict policies and procedures required by the exemption. The proposed condition aims to ensure that the insurance intermediary is in a position to meaningfully mitigate compensation conflicts across products and insurers, which is a critical safeguard of the exemption, as proposed…
>
> …Sufficiently large intermediaries that sell many products from a wide variety of insurance companies are in a position to control the compensation that the agent stands to receive from the various insurers and products and, thereby, minimize or eliminate the independent agents' conflicts of interest in choosing between insurance companies and products. In addition, the anti-conflict purpose of the exemption's conditions would not be served with respect to an entity that is so small that the difference between the firm's conflicts and the individual advisers' conflicts is essentially nonexistent.

Again, we share the Department's concerns in these regards. Likewise, we recognize the difficulty faced by the Department in extrapolating an objective standard as to exactly what constitutes a "sufficiently large intermediary." However, we respectfully submit that the current premium threshold would operate to render the Exemption more restrictive than the Department intends, or that would be reasonable.

In some recent years, Crump has sold fixed-rate and fixed indexed annuities totaling $1.5 billion in premiums, but it does not meet that threshold consistently from year to year, and its 3-year average is closer to $1.3 billion. Crump would satisfy the threshold on a 3-year lookback basis if variable annuities for which it provided services (but which, of course, were sold through a broker-dealer) were also taken into account. Crump is also a very large distributor of life insurance.

As a measure of financial stability and resources, as well as the ability to manage compensation-driven conflicts across numerous carriers and products through broad distribution relationships, we submit that a superior metric would include not only premiums for fixed-rate and fixed indexed annuities, but also variable annuities and life insurance. One of the most important functions of insurance intermediaries is their analysis of the financial strength and claims-paying ability of insurance companies – this carries through to all types of annuities and insurance contracts (primarily life insurance) of which a recommendation would constitute fiduciary investment advice per the Department's regulation. Naturally, the best interests of Retirement Investors

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who would benefit from annuities and/or life insurance products are best served when all available products are taken into consideration.

For these reasons, premium volume as to all of these products collectively is a more logical barometer of the breadth of an intermediary's carrier and product relationships, knowledge and experience, and ability to manage conflicts.

To take this concept a step further, we would suggest that the Department also consider covering recommendations of life insurance in the Exemption. Insurance intermediaries generally offer both annuities and insurance, and recommendations of life insurance (i.e., whole, permanent and similar policies with an "investment component") are likely to be considered fiduciary investment advice, unlike health, disability or other forms.

In support of adding life insurance to the Exemption, we would reiterate our belief that the best interests of Retirement Investors would be best served by expanding product availability beyond just those types of annuities to which the current Proposal would apply. Life insurance sales may be made through the "general" Best Interest Contract Exemption, and so expanding this availability to insurance intermediaries under the Exemption would be more congruent and logical. In Crump's view, there would be potential benefits to applying a single system of compliance and oversight (under the Exemption) for annuities and life insurance sold via insurance intermediaries, rather than requiring the use of different exemptions (including PTE 84-24 for life insurance) even where only a single agent provides services to a single customer, which could potentially create confusion among retail investors as to what products the "Best Interest Contract" applies.

We also note that the Department appears to believe that permitting approximately 19 IMOs to utilize the Exemption would likely be acceptable. In relevant part, footnote 92 in the Proposal explains that:

> The Department obtained the sales information about seven IMOs from their exemption applications and media reports. All these seven IMOs met \$1.5 billion premium threshold and altogether reported approximately total \$20.45 billion sales in 2015…According to the LIMRA U.S. Individual Annuity Year book 2015, \$38.4 billion total premiums—\$34.1 billion in FIAs and \$4.3 billion in fixed-rate annuities—were sold through the independent agent distribution channel in 2015. **This implies that approximately \$17.95 billion FIA and fixed-rate annuity sales (\$38.40–**

> **$20.45) were generated by other entities/ agents. Assuming that $17.95 billion sales were generated by IMOs, not by agents without any IMO affiliation and assuming that each IMO equally generated $1.5 billion sales, the Department estimates that twelve ($17.95 billion/$1.5 billion) IMOs potentially would be eligible to use the exemption. Thus, in total, 19 (12+7) IMOs would potentially use the exemption…***(Emphasis added)*

Per the highlighted language in the above-cited passage, the assumption that all $17.95 billion of estimated fixed-rate and fixed indexed annuity premiums (the entire portion that is not attributable to the seven IMOs who purportedly meet the Proposal's current premium threshold) is (or would be) attributable to exactly twelve other intermediaries who each transact almost exactly $1.5 billion per year is clearly not accurate.

Industry research from third-parties indicates that there are approximately 350 independent and field marketing organizations operating nationwide.[2] Consider that, if on average, only 300 smaller insurance intermediaries each transact only an average of $30 million annually in fixed-rate and fixed indexed annuities (that is, a mere 2% of the Proposal's $1.5 billion premium threshold), this alone would account for some $9 billion in premiums, cutting the Department's $17.95 billion figure effectively in half.

Likewise, it is not true that all independent agents have an "IMO affiliation," meaning that the $17.95 billion figure must be presumed to be too high as a measure of product distribution solely via IMOs.

Further, communications with our insurance company partners indicate conclusively that the level of premiums varies far more significantly from intermediary to intermediary than the Department's assumptions would indicate.

In fact, based on these communications, it is our belief that the number of current insurance intermediaries who would satisfy the Proposal's $1.5 billion threshold might very well be limited to just those seven whose sales information the Department obtained, and almost certainly would not exceed eight or nine in total.

In short, any premium threshold should logically take variable annuities and life insurance into account (and ideally, the Exemption should cover life insurance recommendations) and the Proposal's $1.5 billion threshold (for fixed-rate and fixed

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[2] Warren S. Hersch, *IMOs to DOL: Fiduciary rule class exemption sets too high bar*, LifeHealthPRO (Jan. 24, 2017) *at* http://www.lifehealthpro.com/2017/01/24/imos-to-dol-fiduciary-rule-class-exemption-sets-to

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indexed annuities only) would not only exclude some of the largest intermediaries in the country, but it would also appear to make the Exemption more exclusive than even the Department's own assumptions and expectations would indicate.

With all of this in mind, Crump respectfully submits that:

- $1.5 billion would constitute a generally appropriate premium threshold only if it included all annuities (including variable) and life insurance as well;

- If the Department were to take fixed-rate and fixed indexed annuity premiums and life insurance premiums into account, a more reasonable figure would be in the range of $1.1 to 1.2 billion; or

- If the Department insists that only fixed-rate and fixed indexed annuity premiums be taken into account, a more reasonable figure would be in the range of $1.0 to 1.1 billion.

In short, one of the above thresholds would more effectively "draw the line" between those intermediaries who can be reasonably expected to ensure compliance with the Exemption's protections, and permitting the scope of intermediaries who may rely on the Exemption to be more commensurate with the Department's expectations and apparent intentions.

A central theme of the Proposal and its preamble is the ability of intermediaries within a hierarchical model to rely on another entity to act as the Financial Institution. This could occur not only through contractual relationships, but also mergers and acquisitions of entities. In fact, the preamble is clear that the existing premium threshold "may accelerate mergers and acquisitions among IMOs." If current IMOs were to consolidate to an enormous degree, the assumption that about 19 organizations could rely on the Exemption would be closer to a reasonable figure, but still not accurate – both because this would not occur in all cases, and because the resulting conglomerates would surely not "split the market" for fixed-rate and fixed indexed annuities evenly such that each would sell almost exactly $1.5 billion per year.

On one hand, actively encouraging entity consolidation may achieve efficiencies and help ensure that compensation-driven conflicts between different carriers and products can be more effectively mitigated, at least arguably. On the other hand, any such benefit(s) needs to be weighed against the deleterious effect of reducing competition in the marketplace, including the possibility of creating virtual monopolies in certain

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geographic areas. Preserving competition in the free market is undoubtedly a desirable goal, a point upon which the Department has expressed its agreement in the Proposal's preamble:

> If IMOs and related independent agents sell their services and FIAs in efficiently competitive intermediate and consumer markets, then such efficiency would accrue mostly to Retirement Investors.

Even more concerning in our view is the risk that mandated compliance with an inappropriately high premium threshold (prior to the Exemption's Applicability Date) could have the effect of incentivizing numerous intermediaries with disparate practices, procedures and controls to hurriedly enter into contractual agreements or even ownership/control affiliations simply to preserve their businesses by any means available, likely increasing the risk of compliance missteps.

To be clear, Crump itself is a "single" insurance intermediary and has no present intention to enter into any type of hierarchical distribution arrangement with other entities. It does not intend to act as the Financial Institution on behalf of other IMOs due to the increased risk of compliance problems associated with acting as a Financial Institution on behalf of third parties it does not own or control. Crump likewise does not intend to rely on another entity to serve as a Financial Institution for Crump.

However, we respectfully submit that no reasonable premium threshold should operate to exclude Crump, which is one of the largest single (non-hierarchical) insurance intermediaries in the country. It is Crump's belief that the interests of Retirement Investors are best served by robust and comprehensive internal controls, not outside affiliations, as well as broad product availability. Crump has robust Legal and Compliance Departments and is insurance and securities-licensed in each state.[3] Crump also has extensive, broad, and long-standing insurance company and agent relationships, and believes in the effectiveness of consistent compliance practices within a single organization, and Crump (or any other insurance intermediary of similar size and with similar capabilities) should not be forced to choose between adhering to the "single entity" business practices it believes are most protective of investor interests or losing eligibility to rely on the Exemption.

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[3] Crump is subject to the supervision of banking regulators, including the Consumer Financial Protection Bureau, and all 50 state insurance regulators. Crump's operational procedures are likewise audited by an independent CPA firm annually.

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In fact, we would respectfully urge the Department to consider the possibility that encouraging (whether or not intentionally) large numbers of small intermediaries to enter into quickly cobbled together contractual relationships or other affiliations with separate companies could actually result in incongruences that may make violations of the Exemption more likely to occur.[4]

B. ***As to Any Premium Threshold, the Exemption Should Include Safe Harbor Relief to Deal with Unanticipated Premium Fluctuations on an Ongoing Basis.*** The three-year lookback model proposed by the Department provides some relief to avoid loss of the Exemption due to an unforeseeable decline in premium sales, but more comprehensive and concrete relief would be an improvement.

In a practical sense, during any three-year period, premium volume during the first two fiscal years would ideally exceed the threshold by a sufficient margin to prevent immediate loss of the Exemption should premium volume in the third year fall. Of course, the higher the "excess" during the first two years, the less risk present. For example, under the Proposal, if premiums during the first two fiscal years within the period are at least $2.25 billion, yielding at least a three-year average of $1.5 billion ($4.5 billion/3), irrespective of third year premiums), there would be no risk at all. Below that amount, a continuum of risk exists and IMOs will not know the precise level of premiums during the (immediately preceding) third lookback year until recommendations in the current fiscal year have already been made.

Our concern is that – faced with a possible loss of eligibility for the Exemption – intermediaries could be disproportionately incentivized (during the third fiscal year of any period) to recommend fixed-rate and fixed indexed annuities even where they

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[4] Further on these points, while it is not of central importance to Crump, we remain highly skeptical that the Proposal's requirement that the Financial Institution manage compensation-driven conflicts "regardless of the source of the incentive," in cases where the relationship between the agent and the Financial Institution is not exclusive, is not realistic or viable. Absent exclusivity, managing conflicts (from other sources) would be virtually impossible. And other than the suggestion to require agents to provide an "accounting" of other compensation sources related to fixed-rate and fixed indexed annuity distribution, this requirement (as described in the Proposal) is a vaporous concept largely devoid of any meaningful guidance on what actions a Financial Institution in such a position would have to take in respect of inappropriate incentives emanating from unrelated third parties.

To the extent of Crump's reliance on the Exemption (as a Financial Institution), Crump's current intentions would be to require exclusivity with agents, and we respectfully suggest that the Department consider imposing an exclusivity requirement in all cases.

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might not be in investors' best interests. On the other hand, intermediaries could seek to increase their premium volume through appropriate means – such as entering into relationships with more agents or otherwise expanding their businesses. The challenge is that encouraging the use of appropriate means to increase premiums to the requisite level will require sufficient lead time.

With this in mind, we would suggest that if the average premium threshold is satisfied during the first two fiscal years of any three-year period, and if premiums during the third year cause the average to drop below the requisite level, that intermediaries be afforded an additional fiscal year to continue relying on the Exemption, during which the intermediaries would be afforded time to expand their businesses so that the threshold would be satisfied both up front and on an ongoing basis.

Another conceptually similar approach would be to preserve reliance on the Exemption during any fiscal year where the premium threshold was satisfied in at least one of the previous two years. Again, this would mean that IMOs would be guaranteed at least a one-year "safe harbor" period to increase premium volume through measured business means whenever the threshold is not met during the prior year (or where is does not appear that it will be met as to the current year).

Regardless of the particulars, any approach that recognizes a one-year "safe harbor" or "grace period" after failing to satisfy the threshold in the immediately preceding year would allow an IMO to take measured and well thought-out action to ensure ongoing compliance, rather than being faced with the unenviable (and dangerous) choice of increasing premiums through any means available as the immediately preceding year draws to a close, or losing reliance on the Exemption.

C. ***Any Premium Threshold Should Not Be Indexed to Grow With Consumer Price Inflation or Otherwise.*** Causing any premium threshold to increase automatically with CPI or any other index would create additional complications with no material benefit. Naturally, one problem with such an approach is that the index growth is often unknown until after the fact.

However, even if the indexing could be accomplished through some lookback method (to prevent retroactive application), it is unlikely that an insurance intermediary with sufficient size to ensure compliance with the Exemption's protections in one year would cease to become such during a subsequent year simply because its premiums do not grow by two or three percentage points.

Numerous other metrics selected by the Department – for example the $50 million threshold for "independent fiduciaries with financial expertise" – do not automatically increase every year just to keep pace with inflation, and we see no persuasive reason to take a different approach here.

Rather, subject to our earlier comments, we would suggest that the Department adopt a sufficient premium threshold such that it should not require adjustment in the near future. To the extent some periodic (*e.g.*, every five years) adjustment may be appropriate, a better approach would be to propose an amendment to the Exemption at that point-in-time, subject to public comment and with the benefit of hindsight knowledge. This is consistent, for example, with the Department's approach as to the (currently $85 million) assets under management threshold for the Qualified Professional Asset Manager ("QPAM") exemption, PTE 84-14.

II. Audited Financial Statements

A. Requiring Audited Financial Statements, and Web Posting of the Statements, Would Be of Dubious Value. The requirements that the Financial Institution must (i) have financial statements that are audited by an independent CPA firm, and (ii) post the audited financials as part of the web disclosure, would not likely provide significant value to the vast majority of Retirement Investors.

Naturally, the mere requirement to produce audited financials is not protective of Retirement Investors' interests, which can be produced by an organization even in the direst of financial straits. Thus, any benefit must be presumed to come from the public disclosure of those statements.

In our view, it is unlikely that any significant number of Retirement Investors would take the time to review the financial statements online, and only those with very significant finance and accounting expertise would be able to accurately assess the relative financial health of competing IMOs on such as basis. Contrary to the preamble's implication, we do not believe it is realistic to expect that any statistically significant number of Retirement Investors would, on account of having audited financials available to them on a web site "be alerted to any financial weaknesses or other items of concern with respect to the stability or solvency of the Financial Institution, or its ability to stand behind its commitments to Retirement Investors."

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Likewise, there is no analog to such a requirement in the "general" Best Interest Contract Exemption. We respectfully submit that insurance intermediaries of the size that would be eligible to rely on the Exemption should not be presumed to be in need of this additional requirement to "provide reasonable assurance of the entity's financial health," as the preamble implies, where no such need has been deemed by the Department to exist for other types of Financial Institutions, irrespective of their size.

Finally, we would point out that the Proposal's requirement as to audited financials is reflected in the definition of "Financial Institution," meaning that compliance is presumably required as of the Exemption's Applicability Date. It is not clear how this requirement would apply to newly created Financial Institutions or others that have not produced audited financials in the past.

B. If the Requirement is Imposed, More Flexibility as to the Form of Audit Should Be Available. While such a requirement – in our view – would not provide significant protection to Retirement Investors, related costs and burdens that would ultimately be passed on to Retirement Investors could be reduced by making greater flexibility available. There are two possibilities that would provide such relief in Crump's particular case (and we expect, some other intermediaries as well):

First, Crump is a wholly-owned subsidiary of BB&T Corporation, a publicly-traded company. As a company listed on the New York Stock Exchange, BB&T Corporation is already required to have its consolidated financial statements (which include the assets and liabilities of Crump and all its other subsidiaries) audited by an independent CPA firm under the securities laws. Thus, Crump would have no particular business-related objection to the requirement if the Department would clarify that the consolidated audited financials of a publicly-traded parent company would satisfy it.

In our view, this approach would provide at least as much assurance as to the resources and financial stability of the organization as a whole than would a disclosure of audited financials for Crump alone, and would do so without requiring significant additional costs to be incurred.

Second, like many other institutions, Crump's internal controls and procedures are subject to annual audit by an independent CPA firm under SSAE 16 (formerly SAS 70). The Department specifically sought comment on the use of such audits in place of "traditional" audited financials.

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In our view, reliance on these types of internal control/process audits would provide far more protection for Retirement Investors – including as to compliance with the Exemption's requirements – than would audited financial statements. Likewise, this approach would avoid significant additional costs for the intermediaries who are already required to engage in such audits, which include banks and trust companies.

III. Marketing Materials and Disclosures

A. ***Relief is Needed as to the Review of Marketing Materials.*** Both during and after the Transition Period, the Financial Institution is required to review and approve all marketing materials used by agents, after having determined that they present "a balanced description of the risks and features" of the fixed-rate and fixed indexed annuity contracts to be recommended. Likewise, contracts with agents are required to stipulate that only approved materials can be utilized.

As a practical matter, we should point out that the vast majority of marketing materials for fixed-rate and fixed indexed annuities are developed by the insurance companies that issue the contracts, not by IMOs and certainly not by individual agents. Insurance company-produced marketing materials are already subject to significant regulation by state insurance departments, who are best qualified for such an oversight role. For these reasons, regulation of carrier-issued marketing materials relates much more to the regulation of insurance generally than the regulation of investment advice provided by IMOs and insurance agents.

Furthermore, the requirement in the Proposal that the review described above be completed prior to the Applicability Date of the Exemption (that is, at the outset of the Transition Period) would be virtually impossible to comply with, if not literally so. In light of the scope and breadth of marketing materials that insurance companies may create and update on a continuous basis, this would constitute a massive and expensive undertaking requiring significant additional staffing and other compliance expenditures.

We would also point out that no such requirement is imposed on any entity as to distribution of fixed-rate annuities under PTE 84-24, nor as to any annuity sold by an RIA or broker-dealer under the "general" Best Interest Contract Exemption. Irrespective of any perceived differences between various types of institutions, we respectfully submit that there is no reasonable basis to impose distinctly on IMOs a requirement to "police" the marketing materials of insurance companies, where the

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exact same product could be distributed using the exact same marketing materials by other types of entities, with no such review requirement imposed.

For all of these reasons, we suggest that all marketing materials provided by insurance companies for use with the public, bearing non-expired "compliance codes" per existing regulatory structures, should be treated as "pre-approved." Then, the intermediary's review obligation would only extend to materials produced by the intermediary itself. Contracts with agents could then stipulate that only use of (i) current carrier-produced materials or (ii) materials produced and approved by the IMO, are permitted, and that the agent will not develop his or her own marketing materials or otherwise utilize materials from any unapproved source.

B. ***Illustration of Fixed Indexed Annuity Performance Should Not Be Required.*** In relation to the annuity-specific disclosure requirement in the Proposal, the Department requested comments as to whether a certain "illustration" should be required for fixed indexed annuities. The Proposal's preamble queries:

> In particular, with respect to fixed indexed annuity contracts, should the exemption require an illustration designed to convey the difference between the performance of the applicable index or indices and the amount credited to the customer's annuity, in light of the indexing features such as the participation rate; any spread, margin or asset fees; interest rate caps or floors; and the recognition of dividends. For example, should the exemption require that Financial Institutions provide a chart illustrating prior annual returns of an index for a certain number of years compared to the amounts that would have been credited annually under the terms of the indexed annuity contract? If commenters believe such a disclosure would be desirable, the Department requests comment on how it should be operationalized.

We object to the addition of any such requirement, principally for two reasons:

First, to use the Department's wording, insurance intermediaries have no power to ensure that such a requirement is in fact "operationalized." Such an illustration would have to depend entirely on software or other marketing materials created by the insurance company that issues the contract, if any such materials are in fact created. Stated simply, to the extent that such an "illustration" should be required, such a requirement would have to be imposed on the insurance company, not the IMO. In no case could IMOs be reasonably expected to produce and update illustrations for large numbers of different annuity contracts designed and issued by multiple third-party insurance companies.

Second, in many cases such a requirement would be entirely infeasible because many state insurance regulators expressly prohibit illustrations for products linked to an index for less than ten years. In effect, such a requirement would therefore preclude sales of many fixed indexed annuity contracts with timelines under the 10-year threshold.

IV. Other Procedural Matters

A. ***Clarification that Flexibility is Available as to Annual Training Is Needed.*** We fully endorse the Department's requirement in the Proposal that the Financial Institution must provide, and agents must attend, annual training as to compliance with the Exemption. Our only comment as to this issue is that the Exemption should clarify that different forms and types of training may be utilized, and in particular, that (i) online or web-based training may be utilized in lieu of live, in-person training and (ii) as to such training, the Financial Institution's obligation to require agent attendance could be satisfied through the agent's certification that the training was completed and the material was understood (or some similar means).

B. ***Clarification as to Application of Negative Consent Process Would Be Appropriate.*** As to any "Existing Contract," defined in the Proposal as an annuity contract that was executed before August 15, 2018 (the end of the Transition Period) and remains in effect, the IMO would not be a party to such contract. Rather, the sole "Existing Contract" parties would be the Retirement Investor and the insurance company.

We would request clarification as to whether and under what circumstances the negative consent process could be used for an existing annuity customer, but with whom the intermediary has no pre-existing written contractual relationship.

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Again, we thank the Department for the opportunity to provide our comments on the Proposal. We very much hope that you find our comments to be helpful.

Sincerely yours,

Christie Corado

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