



September 15, 2017

Office of Exemption Determinations
Employee Benefit Security Administration
Attention: D-11712, 11713, 11850
U.S. Department of Labor
200 Constitution Avenue, NW, Suite 400
Washington, DC 20210

Subject: Request for Comment on Extension of Transition Period and Delay of Applicability Dates of Proposed Amendments to PTE 2016-01, PTE 2016-02, and PTE 84-24 (ZRN 1210-ZA27)

The Indexed Annuity Leadership Council¹ (IALC) appreciates the opportunity to respond to the proposed amendments to delay the applicability dates of the Best Interest Contract Exemption (BICE) and certain changes to Prohibited Transaction Exemption 84-24 (collectively, the PTEs) in order to give the Department of Labor (Department) time to consider possible changes and alternatives to these PTEs. IALC notes that it has previously submitted comment letters to the Department on every request for comment or information that the Department has issued regarding the Fiduciary Rule (Rule) and its related PTEs, and IALC hereby incorporates by reference those comments as part of this letter.

IALC believes absent changes to the PTEs, many retirement savers will be harmed as they lose access to much needed investment advice. The Department's proposal to delay the applicability dates will enable the Department to collaborate with all stakeholders, including the NAIC, the SEC, and other regulators, to adopt a standard that is consistent across all regulators. The proposed delay will also ensure retirement savers continue to have access to the best advice possible and to all financial products that address their individual retirement needs, as the Department considers: (1) adopting changes to the PTEs, or (2) offering alternative exemptions.

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 American, 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.

IALC observes that the preamble to the proposed changes does not discuss the numerous public comments that focused on the need for a workable exemption that preserves the ability of independent insurance agents to recommend fixed indexed annuities (FIAs) when such products are in their client's best interest. IALC believes a delay in the applicability dates should be structured to offer ample time for the Department to adopt an appropriate exemption, such as the transition period version of PTE 84-24, for advisers recommending the purchase of FIAs.

Even before the initial delay of the applicability dates was proposed, the Department acknowledged that the current definition of "financial institution" in BICE was too narrow and might undermine a meaningful portion of the distribution channel for certain annuity products, such as FIAs. The Department initially responded to this problem by proposing a best interest contract exemption for insurance intermediaries on January 19, 2017.² This proposed exemption reflects the Department's understanding that the BICE and the exclusion of FIAs from PTE 84-24 significantly limit the ability of independent insurance agents to recommend FIAs. In the preamble to that 2017 proposal, the Department stated, "[f]ixed indexed annuities, with their blend of limited financial market exposures and minimum guaranteed values, can play an important and beneficial role in retirement preparation."³

It has been eight months since the Department published its proposed exemption for insurance intermediaries and to date, no further action has been taken. It is possible the Department will substantially revise or even revoke the Rule pursuant to the February 3, 2017 President's Memorandum. But in the event that does not occur and an exemption for FIAs is still needed, instead of attempting to correct the shortcomings of the insurance intermediaries exemption, IALC believes the current interim version of PTE 84-24, with its impartial conduct standards, should be adopted as a final rule. As an alternative, should the Department believe PTE 84-24 should exclude FIAs, IALC urges the Department to work with it and other stakeholders to develop an exemption that allows advisers to continue to recommend FIAs when they are the appropriate product for their client.

Specifically, IALC proposes that the Department delay the applicability dates to the later of (1) 18 months or (2) 12 months after the adoption of a new, or modification of an existing, exemption that addresses FIAs. Additionally, the Department's temporary non-enforcement policy should continue during this period. This approach will protect retirement savers by ensuring that individualized retirement advice is not devoid of an entire segment of important retirement products, such as FIAs, that may be in their best interest. In addition, this approach will allow continued access to retirement advice providers for those low- and middle-income American savers who many not otherwise have the opportunity to receive such advice under the current Rule.

² Proposed Best Interest Contract Exemption for Insurance Intermediaries, 82 Fed. Reg. 7336 (Jan. 19, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-01-19/pdf/2017-01316.pdf>.

³ *Id.* at 7344.

In conclusion, IALC fully supports the Department's efforts to ensure it gets the final rule correct. IALC hopes the Department will work with it, the NAIC, the SEC, and other stakeholders to ensure the final Rule and exemptions create a consistent standard across all regulators and allow insurance agents to offer FIAs when such products are in their customers' best interest.

Sincerely,

A handwritten signature in cursive script that reads "Jim Poolman". The signature is written in black ink and is centered on the page.

Jim Poolman, Executive Director