



January 2, 2024

Filed Electronically

Employee Benefits Security Administration
Office of Exemption Determinations
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210
Attention: Application No. D-12057

Re: Proposed Amendment to Class Exemption PTE 2020-02

Ladies and Gentlemen:

We appreciate the opportunity to comment on the Department of Labor's proposed amendment to prohibited transaction class exemption (PTE) 2020-02.

1. **New York Life**

New York Life, founded in 1845, is the nation's largest mutual life insurance company. As a mutual company, New York Life has no stockholders. Our interests are aligned with those of our policyholders, who are our only constituency. New York Life is singularly focused on helping Americans of all ages and income levels achieve financial security.

New York Life has the highest possible financial strength ratings currently awarded to any life insurer from all four of the major credit rating agencies.¹ Our goal is to help our clients enjoy a comfortable and financially secure retirement, knowing that the guaranteed products they purchase from us are backed by our financial strength and 178-year history of keeping our promises.

New York Life's proprietary insurance and annuity products are offered primarily through a network of 12,000 full-time agents located in all 50 states. Our agents reflect the diversity of America. In 2022, half of our financial professionals affiliated with one of our six Cultural Markets, which serve the African American, Latino, Chinese, South Asian, Korean, and Vietnamese communities across the country.

2. **Training our Career Agents**

We currently comply with PTE 2020-02 in many sales and advice scenarios. We are concerned that the proposed amended preamble to PTE 2020-02 could curtail our ability to continue hosting paid educational conferences for our career agents, as we have for the last 125

¹ Individual independent rating agency commentary as of 11/17/2023: A.M. Best (A++), Fitch (AAA), Moody's Investors Service (Aaa), Standard & Poor's (AA+).

years. These are important educational, cultural, and motivational events that further our agents' abilities to help their clients achieve financial security and peace of mind.

When new agents join New York Life as common law employees, they are required to undergo an intensive, locally provided training program. Once they demonstrate their potential for a successful, long-term career as a financial professional, they can qualify for one of three educational conferences. To qualify, they must achieve an annual sales threshold, demonstrating that they are consistently engaged, focused on the agent career, and motivated to help clients. Typically, our agents succeed in achieving this threshold after they have finished the intensive introductory training program and become statutory employees/independent contractors.

Qualification criteria for our conferences measure the total annual sales of the full range of insurance products that we offer, including life insurance, annuities, disability insurance, and long-term care insurance. Asset under management programs and proprietary and non-proprietary mutual fund sales also count toward qualification. Because the qualification criteria measure total annual sales across a diverse range of products, our career agents remain centered on meeting client needs rather than favoring a particular product. There is a shared focus on serving the best interests of the client.

The conferences include a significant training component – with more than a half day of educational and business content daily. Additionally, targeted breakout training sessions and more informal interactions give agents opportunities to interact and learn from company experts who specialize in product training, client support, and compliance. The different levels of conferences help us tailor the attendance and training to the needs of agents who operate at different production levels – and allow them to learn from their peers who are at the same level.

During our conferences, the company's senior leaders make presentations to convey key information about our strategic direction and help our career agents feel included in the company culture, no matter where they are based. In the wake of the pandemic, impersonal digital interactions have assumed a larger role in the everyday work of agents and company personnel, making it especially important for us to sustain forums like our educational conferences that foster in-person human connection. This engagement helps us develop and sustain long-term relationships with our career agents, positioning them to serve clients through all phases of life.

In addition, our educational and training conferences comply with FINRA requirements, the standards set forth in SEC Regulation BI, and New York Insurance Law limits on non-cash compensation. The events also qualify as business conferences under the Internal Revenue Code. Only the agent's expenses are reimbursed; they must pay for any guests.

To help ensure that the conferences create appropriate incentives consistent with the best interests of clients, we have instituted compliance procedures to supervise the conduct of our agents. For example:

- We maintain a staff of over 175 compliance professionals at our headquarters and in local offices. Their responsibilities include reviewing and monitoring sales practices, periodic

inspections and interviews, regular training for agents, and individual advice to promote best practices.

- To identify and remediate compliance risks, our compliance staff analyze and follow up on data points like lapses and reversals, product replacements, and customer complaints, including in the periods leading up to and following the point each year when we determine qualification for attendance at educational conferences.
- In addition, we have deployed software applications to vet product recommendations and flag them for review when data on client needs suggests possible disconnects between the recommendation and the client's best interests.

3. **Suggested Revisions to the Preamble to Amended PTE 2020-02**

The preamble to amended PTE 2020-02 states that financial institutions should not offer “*paid trips to educational conferences, if the desirability of the destination is based on sales volume and satisfaction of sales quotas*” (emphasis added). In our view, this prohibition goes too far and undermines the ability of companies to train and motivate their career agents by providing well-designed, carefully supervised educational conferences tailored to their unique, differentiated training needs.

It would not be practical or cost-effective to invite every agent who sold, or might sell, one of our products to our educational conferences. There is no location large enough to accommodate such a large group of agents in a reasonable way that still allows for a meaningful and differentiated educational, learning and culture-building experience. Further, most agent attendees are statutory employees/independent contractors. As a result, we do not mandate their attendance. Accordingly, we try to make our conferences attractive enough so that agents are willing to take time away from their day-to-day business.

We respectfully request that the Department amend the new preamble to PTE 2020-02 to allow appropriately designed educational conferences to continue, while establishing a structure to restrict those that may create inappropriate incentives. Specifically, we believe that the PTE 2020-02 preamble should not prohibit paid trips to educational conferences, regardless of differences in destination, where:

- Eligibility is determined by overall annual sales production (and not sales of a single product or single group of products during a limited period);
- The conference has significant educational components, including required sessions that convey educational and business content to attendees; and
- The company providing the conference has instituted reasonable compliance procedures to help ensure the conferences are consistent with client best interests.

In that regard, we believe that the language in the PTE 2020-02 preamble (cited above) should be revised in the final regulation to include the emphasized language below:

“To satisfy Section II(c), Financial Institutions may not use quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation, paid trips to educational conferences, or other similar actions or incentives that are intended, or that a reasonable person would conclude are likely, to encourage Investment Professionals to make recommendations that are not in Retirement Investors’ Best Interest. With respect to paid trips to educational conferences, factors that may be relevant include: the incorporation of significant educational components into the conference; required and monitored attendance at sessions covering educational and business content; qualification criteria that are not based on sales of a single product over a limited period of time; and the implementation of reasonable policies and procedures to help ensure that the conferences do not encourage Investment Professionals to make recommendations that are not in Retirement Investors’ Best Interest.

A Financial Institution should not offer incentive vacations if the desirability of the destination is based on sales volume and satisfaction of sales quotas.”

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We share the Department’s desire to assure a secure retirement for all Americans. Our mutual company model and career agency system are ideally suited for this challenge. We build products that offer ironclad guarantees. We operate our company so that we can meet those guarantees in any economic climate. And we train, educate, and deploy agents whose mission is to help Americans prepare for the risks and opportunities that life brings.

Thank you for considering our suggested modifications to the preamble to PTE 2020-02, and for the opportunity to provide our feedback. If you have any questions or need additional information regarding this submission, please feel free to contact me.

Sincerely,



Michael McDonnell
Senior Vice President & General Counsel
New York Life Insurance Company