August 7, 2017

Office of Exemption Determinations
Employee Benefit Security Administration
Attention: D-11933
U.S. Department of Labor
200 Constitution Avenue, NW, Suite 400
Washington DC 20210

Subject: Request for Information (RFI) Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (RIN 1210-AB82); RFI Questions 2-18

The Indexed Annuity Leadership Council[1] ("IALC") appreciates the opportunity to respond to the RFI published July 6, 2017 in the Federal Register requesting comments in connection with the Department of Labor's ("Department") examination of the final fiduciary rule ("Fiduciary Rule") and the related prohibited transaction exemptions ("PTEs") issued by the Department on April 8, 2016 (collectively, the "Final Rule"). We submitted under separate cover, our comments on Question 1 related to the delay of the January 1, 2018, applicability date for the Best Interest Contraction Exemption ("BICE") and amendments to PTE 84-24.

As the Department is aware, IALC has brought a legal challenge on the Final Rule's treatment of fixed indexed annuities ("FIAs"). IALC stands by the positions set forth in its legal briefs and also the positions articulated in IALC's April 17, 2017 comment letter in response to the Department's March 2, 2017 request for comments on the issues raised in President Trump's Memorandum dated February 3, 2017.[2] As stated in our July 21, 2017 response, IALC believes a delay beyond January 1, 2018 is crucial to protect the interests of and mitigate damage to all persons impacted as the Department continues its review and analysis of responsive comments to the March 2, 2017 request.

It is vital the Department delay and ultimately amend the Final Rule in substance so that American retirement savers will not lose access to products that are in their best interest at a time when they face their greatest need for long-term financial products. We commend the Department for thoroughly reviewing these comments. Described below are some of

[1]IALC is a consortium of life insurance companies that offer fixed indexed annuities (FIAs) and is comprised of Allianz Life Insurance Company of North America, 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. 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.
[2] Fiduciary Duty Rule Memorandum, 82 Fed. Reg. 9675 (Feb. 7, 2017) (the "President's Memorandum").

the negative impacts we are seeing and believe will occur in the marketplace as a result of the Final Rule. We would like to continue to work with the Department to monitor the impact of the interim PTE 84-24 and to continue to offer information and assistance.

In this response, IALC intends to provide further information to help the Department in its continued review of the Final Rule. In particular, this response focuses on four important points that are responsive to the Department's questions:

I. All annuities belong in the interim PTE 84-24 and the Department should adopt this PTE as the permanent version.

II. The Final Rule could result in recommendations based on the least onerous compliance regime as opposed to the best interest of consumers.

III. It is vital that the Department coordinate with other regulators in development of this rule, in particular the Securities and Exchange Commission (SEC) and the National Association of Insurance Commissioners (NAIC).

IV. The BICE creates a compliance dilemma for the FIA industry that disproportionately harms consumer access to FIAs.

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<u>I. Annuities belong in the interim PTE 84-24 and the Department should adopt this PTE as the permanent version.</u>

<u>Picking Fiduciary Rule Winners and Losers Hurts Retirement Savers</u>

The proposed rule and related PTEs, which were published on April 15, 2015, treated all fixed annuity products similarly by placing them within revised PTE 84-24.[3] However, one byproduct of this decision is that it created a divergence among insurance products, with the BICE serving as the only exemption available for variable annuities, while creating an opportunity for fixed annuities to utilize either PTE 84-24 or the BICE. When the Final Rule was published, the Department further differentiated annuity types under its regulatory structure; it made the BICE the only applicable PTE for FIAs and variable products, and created a brand new class of annuities – "Fixed Rate Annuity Contracts" – which were the only annuities permitted to rely on PTE 84-24.[4] This distinction is arbitrary and creates a regulatory structure that will itself drive recommendations to retirement savers that are not necessarily in their best interest.

The Department's decision to split and regulate classes of annuities differently effectively placed comparable insurance products into completely distinct regulatory silos under the

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[3] 80 Fed. Reg. 22011
[4] 81 Fed. Reg. 21176

Final Rule, even though all annuity products remain “insurance contracts” subject to significant and ongoing regulatory oversight by state insurance departments. This split has created, and continues to foster significant disruptions in the marketplace to the detriment of middle-income American savers seeking access to annuity products and advice to help address their fundamental retirement needs.

The Department justified the disparate treatment of various classes of insurance annuity products by stating that the final exemption “creates a level playing field for variable annuities, indexed annuities, and mutual funds under a common set of requirements…”[5] Unfortunately, this has simply not been the case in practice. Instead, either through an unintended consequence or direct disfavor of certain classes of annuity products, the Department has effectively picked what it perceives as winners and losers for retirement savers among and within the various classes of insurance annuity products. This is due to the fact that most independent insurance-only agents can offer both “Fixed Rate Annuity Contracts” as well as FIAs. They face a compliance reality that makes one product less burdensome to recommend (fixed rate annuities) over the other (FIAs), even though the FIA may better fit a particular consumer’s needs. Additionally, a dually-licensed adviser is faced with a similar conundrum – PTE 84-24 for one annuity product, BICE for the other two. In response to RFI Question 3, the Final Rule thus does not appropriately balance the interests of consumers in receiving broad-based investment advice while protecting them from conflicts of interest. Rather, it creates an inherent bias for low-risk, low-cost, and potentially low-growth Fixed Rate Annuity Contracts, limiting the upside potential for those retirement savers with more aggressive accumulation goals, and/or lifetime income needs. While it is too early to tell if this compliance disincentive is meaningfully impacting recommendations, early indications show that sales of products qualifying as “Fixed Rate Annuity Contracts” have climbed in 2017’s first quarter compared to the previous quarter while FIA and variable annuity sales have declined over the same time period.[6]

By placing FIA and variable annuity products into the BICE, the Department is effectively equating “buy-and-hold” insurance products to riskier and more commonly managed securities products that have a logical home in the BICE. According to the preamble of the proposed regulation, BICE was designed for security products sold through broker-dealers and registered investment advisors. While we believe BICE has significant problems as finalized, it was certainly never designed for an insurance product sold through independent insurance agents and does not work in this context. Question 17 of the RFI asks whether including all annuities in PTE 84-24 would give annuities an unfair advantage over other products, such as mutual funds. The answer is a simple “no” for three reasons: (1) PTE 84-24 will subject annuity distribution systems to the same Impartial Conduct Standards as would the BICE; (2) annuity products benefit from added financial oversight at the manufacturer level through stringent, legally enforceable and auditable financial and reserving standards, so they are "safer" products for long-term retirement investing; and (3) annuities are subject to a layer of regulation by state insurance commissioners to which mutual funds are not, and these regulations impose additional paperwork and analytic

[5] 81 Fed. Reg. 21018
[6] Wink’s Sales & Market Report 1st Quarter, 2017; LIMRA Secure Retirement Institute

requirements that would be excessively burdensome if combined with the requirements of the BICE. Fixed annuities and mutual funds cannot and should not be equated on an "apples-to-apples" basis. One is an insurance product designed for a long-term buy-and-hold strategy that provides guarantees and meets lifetime income needs for the consumer. The other serves a completely different purpose altogether. They should not be sold in the same way or considered as equally effective solutions to solve for similar goals. Fixed annuities are not "managed" products and better fit in PTE 84-24, an exemption designed for the insurance marketplace – not for broker-dealers.

Compliance Realities Since June 9, 2017

As IALC has previously noted, FIAs are largely distributed by independent insurance agents through insurance intermediaries, commonly referred to as independent marketing organizations (IMOs). As the rule currently stands, on January 1, 2018, a significant portion of the FIA marketplace, including independent agents and corresponding IMOs, will be without appropriate exemptive relief to recommend FIAs. This is due to the Department's inclusion of FIAs in the BICE. While the Department has stated in the FAQs that independent agents will have a BICE Financial Institution available through the annuity manufacturer/carrier, the reality is that this has not occurred in the marketplace. This is largely in response to the Final Rule's imposition of significant and immeasurable legal and financial exposure for the carrier coupled with the lack of clear guidance from the Department to mitigate such exposure.[7] It is clear the BICE was drafted with broker-dealers and large registered investment advisors in mind, not insurance companies, which remain removed from (1) the fiduciary transaction, (2) the *independent* agent's product shelf, and (3) have limited control over *independent* agent activities based on the nature of the independent contractor relationship. The Department did attempt to remedy this problem by proposing a new PTE for Insurance Intermediaries published on January 19, 2017.[8] Unfortunately, no IMOs that IALC members work with will likely utilize the PTE as drafted due to its unrealistic and punishing compliance requirements which are extreme when compared to those of other enumerated BICE Financial Institutions. In addition, the rule was only published in proposed form; therefore there is no exemption which IMOs or independent insurance agents can currently rely on or for which they can develop an appropriate compliance program.

The Department seemingly understood this quandary when it issued the April 7, 2017[9] notice to extend the compliance deadline. In response to the President's Memorandum, the Department planned to review and analyze the Final Rule – and further stated that for the remainder of 2017, both FIAs and variable annuities could be sold under the original version of PTE 84-24 (with the newly incorporated Impartial Conduct Standards). Since that time, the industry has made significant strides to comply with this version of PTE 84-24, including: (1) mobilizing agent training platforms; (2) constructing compliance resources to help agents understand their fiduciary duties and the requirements for

[7] See, Conflict of Interest FAQs (Part I – Exemptions) published October 27, 2016
[8] 82 Fed. Reg. 7336, Proposed Best Interest Contract Exemption for Insurance Intermediaries
[9] 82 Fed. Reg. 16902

exemptive relief; and (3) providing compliance assistance to independent agents. Most independent agents are attesting with each sale that they have complied with the Impartial Conduct Standards and applicable exemption requirements. These actions only scratch the surface when it comes to the amount of time, energy and money spent in the months leading up to June 9, 2017 to build out compliance programs in anticipation of the Final Rule.

While the window of time to analyze the impact of the implementation of this PTE has been understandably short, all signs point to industry's successful integration of the Impartial Conduct Standards and compliance with the requirements of the interim PTE. Compliance required collaboration amongst agents, IMOs, and the legal and compliance departments of carriers. As currently constructed, the interim PTE for FIAs and variable annuities strikes the appropriate balance between consumer protection (through the Impartial Conduct Standards, robust disclosure requirements, and additional agent requirements) and access to a range of financial products and advice. The regulated communities of carriers, IMOs and independent agents have made substantial efforts to comply with the Final Rule before and since June 9, 2017. This progress, including the implementation of the Impartial Conduct Standards, unfortunately will be momentary and short-lived if BICE is implemented on January 1, 2018. Instead of implementing BICE on January 1, 2018, the Department should continue to monitor market choices and saver protections to determine if an appropriate balance is met under the interim PTE.

Annuities Belong in PTE 84-24

Question 17 of the RFI invites a comparison of two compliance approaches under the rule: (1) treating IMOs as Financial Institutions; or (2) treating all annuities alike under PTE 84-24. While IMOs may be able to serve as Financial Institutions if the Department significantly reworks the proposed Insurance Intermediary exemption, it is preferable to maintain an annuity-inclusive PTE-84-24. This presents a more consistent regulatory approach for all elements of the insurance industry than the BICE, including all aspects of the industry's distribution channels. In addition, this approach would allow producers to comply with the Impartial Conduct Standards without harming retirement savers by adding additional costs or restricting access to valuable retirement products. Expanding the scope of PTE 84-24 also ensures that advice can be facilitated to all retirement savers – not just to those who meet the required minimum account thresholds.

This approach solves multiple compliance concerns created for IMOs. For one, independent insurance agents distribute products from multiple insurance carriers as well as multiple IMOs. The BICE may force the market to move to agent-to-IMO exclusivity arrangements that will limit consumer choices when receiving advice from independent insurance agents. Alternatively, under PTE 84-24, retirement savers will benefit from having independent insurance agents offering a broader portfolio of products from an array of insurance companies. Under PTE 84-24, IMOs can also continue to serve as an additional checkpoint for conflict of interest reviews, general rule compliance and in-good-order review for agents before submission of applications to carriers. They can also continue to provide important intermediary services, including product training, marketing, wholesaling,

recruiting, and administration, between agents and carriers. Lastly, IMOs will be able to continue to work closely with carriers to grow their product offerings and encourage innovation and product development aimed at solving low- and middle-income savers' retirement and lifetime income goals.

We remain hopeful and dedicated to making the interim PTE the home for all annuity products on a permanent basis. This will eliminate the need for the proposed Insurance Intermediary exemption and places all insurance products where they belong – in a modernized exemption that has appropriately served regulated insurance parties well since 1979.

II. The Final Rule could result in recommendations based on the least onerous compliance regime as opposed to the best interest of consumers.

The RFI suggests that the market may respond to the Final Rule and related PTEs by creating new, innovative products such as fee-based annuities to serve the best interest of retirement savers. It also asks if different or "streamlined" rules should apply to certain products. IALC believes these suggestions are misplaced and that the Final Rule could actually lead to recommendations based on the least onerous compliance regime as opposed to the best interests of the consumer.

Financial planning services and products traditionally are either fee-based or commission-based. The difference in fee structures usually reflects the nature of the products and services offered and the market in which the product or service primarily serves. For example, a retirement saver who wants an advisor to actively manage a portfolio of assets will likely be charged a fee based on assets under management. Such fees can make practical sense for a saver who has a significant level of assets to manage and requires the advisor's regular active involvement. On the other hand, a purchaser of a FIA that does not require ongoing active management is not likely to be well served by paying an annual fee based on the size of the annuity.[10]

By way of example, consider a 60-year old placing $100,000 in a FIA that pays a one-time 6%, or $6,000, commission to the agent. The purchase of the FIA is a buy-and-hold strategy designed to solve for lifetime income and provide important guarantees. This product may be held for upwards of 20 years before lifetime income is turned on by the retirement saver. Now consider the same annuity purchased through an annual fee-based structure based on assets under management. The fee charged the retirement saver for the same 20-year buy-and-hold product will be 1% for 20 consecutive years or a minimum of $20,000. When compared to the upfront 6% commission, how can that be in the consumer's best interest?

There are a number of reasons to doubt that fee-based annuities alone, which are not meaningfully present in the market, will best serve the interest of retirement savers. Replacing a commission with a fee model does not necessarily mean that the purchaser of

[10] LIMRA Secure Retirement Institute, U.S. Individual Annuity Yearbook (2015 Data) at 5, 38.

the annuity receives greater earnings – competitive market forces are the principal driver of annuity prices as they would be on establishing the level of fees assessed by a fee-based annuity. Also, regardless of whether an advisor recommends a fee-based or commission-based annuity, the regulation will require the advisor to act in the retirement saver's best interest, pursuant to the Impartial Conduct Standards – the principal objective of the Final Rule.

Most importantly, the PTE should be the same for all fixed annuities (regardless of their crediting mechanism), including whether they are fee-based or commission-based. The application of the same regulatory framework is the only way to ensure the advisor is incented to recommend the annuity product that is in the retirement saver's best interest, not the one that carries the least regulatory burden. This reasoning also raises significant doubts about whether creating new streamlined exemptions for some products but not others will result in advice that is truly in a retirement saver's best interest or instead encourages advisers to default to products carrying the least burdensome compliance requirements.

In terms of product innovation in general, fixed annuities have been available to individuals since the early 1900s, and their basic structure has remained largely the same through the decades with certain features being changed or added in response to market forces. One of the relatively recent innovations has been the introduction of annuities that credit interest based on a formula that considers a percentage of market index gain – a fixed indexed annuity. Since 2000, sales of FIAs have increased from $5.5 billion to $54.4 billion in 2015.[11] The reason for this rapid growth is that FIAs respond to consumer demands – principal protection with the capacity to share in some market upside while never losing value during market downturns. The Final Rule impairs the distribution channels for FIAs as compared to other fixed annuities as explained in our comment letter of April 17, 2017 and in Section I.

IALC supports the current review of the Final Rule and is optimistic it will result in changes that will help achieve the Department's objectives. However, in the meantime, the prevailing regulatory uncertainty creates a market environment that discourages product innovation and pushes distribution to the least risky alternative. This is another reason that we urge the Department to make PTE 84-24 with its Impartial Conduct Standards available for all annuity products.

III. It is vital that the Department coordinate with other regulators in development of this rule, in particular the SEC and the NAIC.

While the Department has regulatory oversight over retirement plans and those who provide services to such plans, the Final Rule has enormous direct impacts that go far beyond such persons and entities. For example, they impact insurance product design, the financial product distribution channels and what products can even be offered and by whom. Each of these areas is already comprehensively regulated by regulators who have a

[11] U.S. Individual Annuity Yearbook – 2015, p.24.

long history and deep understanding of these products and services. For example, regulators currently regulate and approve product design, the conduct of those who offer the products, and the disclosure regiment that applies to product manufacturers and sellers. However, the Final Rule fails to recognize or harmonize this preexisting regulatory structure.

IALC believes a collaborative rulemaking effort amongst the Department, SEC, and NAIC, is in the best interest of American retirement savers and would allow the Department, SEC, and NAIC to create an effective, functional, and harmonized rule. A collaborative rulemaking process will not only ensure that the necessary inputs are gathered, but also avoid the creation of potentially conflicting regulatory frameworks. Each of these regulators has a unique wealth of knowledge and valuable expertise to offer in the creation of any standard of conduct. The Department and SEC have expressed willingness to work together to correct or replace the Final Rule. The NAIC has also indicated that it is reviewing the current annuity suitability standard for potential replacement or update with a best interest standard and wishes to engage with other regulators to create a workable rule.

With respect to annuities, the NAIC recently commenced a review of a possible best interest standard that would cover FIAs and other annuities and would be intended to function seamlessly with similar federal regulatory frameworks. The NAIC has directed its Annuity Suitability Working Group to review and revise the suitability model governing advice regarding annuities such as FIAs. That working group met, most recently on July 26, 2017, to hear input from the Department and encourage collaboration. At that meeting, the American Council of Life Insurers submitted a summary proposal for a uniform "best interest" standard of care, which Deputy Assistant Secretary Tim Hauser earlier in the same meeting called the "core" of the fiduciary policy.

IALC believes the NAIC is the appropriate regulator to oversee the creation of any cohesive best interest or fiduciary standard for insurance products. Hence, IALC encourages the Department to include the NAIC in future discussions regarding how to best achieve its intended purpose. The NAIC is a collective of 50 state insurance regulators, the District of Columbia, and five U.S. territories charged with creating regulatory standards for the insurance industry and also serves as a coordinator of insurance regulatory oversight. The NAIC has created a dynamic insurance regulatory framework and offers significant and practical experience in working with all annuity products and spearheading and incorporating each state insurance regulator's point of view in creating its regulations. Additionally, the state insurance regulatory members of the NAIC have vast experience regulating insurers, insurance agents, conduct, and products. The NAIC also exercises a great deal of oversight, including dictating business principles, establishing standards of conduct, disciplining violators, and otherwise requiring insurance carriers and agents to align their business practices with the regulators' standards.

Historically, the NAIC has created practical and reasoned rules designed to make certain that retirement savers are well informed of the features and functions of their annuity contracts. State insurance regulators also have experience implementing new rules and

regulations for insurers and have a deep understanding of the necessary timelines to create, implement, and enforce them.

IALC shares the Department's goal of acting in the best interest of American retirement savers. However, in the absence of a collaborative regulatory effort, it is possible various competing frameworks will arise, causing companies to divert resources away from efficient compliance efforts, further stifling innovation, and harming the very retirement savers the Final Rule is intended to protect.

IV. The final BICE creates a compliance dilemma for the indexed annuity industry that disproportionately harms consumer access to such products.

The transfer of FIAs from PTE 84-24 into the BICE threatens access to a product that supports retirement security for millions of American retirement savers at a time when retirement confidence is most needed. For those consumers, a FIA is a straightforward way to balance financial needs and manage a wide range of risks. Interim PTE 84-24 and state insurance regulations provide appropriate consumer protections. Conversely, putting FIAs into the BICE will create uncertainty and confusion. At the same time, any federal regulatory framework going forward must create a straightforward path for IMOs and independent agents to play their critical role in explaining, distributing, and delivering FIAs and other important retirement products to consumers.

Imposing Standards beyond PTE 84-24 is Unnecessary and Harmful to Consumers

Under the April 7, 2017 interim rule, FIAs are regulated under PTE 84-24, which includes Impartial Conduct Standards. In effect, this interim rule created a valuable opportunity for the Department and regulated industry to review PTE 84-24's effectiveness and weigh the need for a more burdensome framework such as BICE. So far, there is no evidence that supports the need for such a framework. There is no basis to impose additional regulatory burdens, no record of increased consumer complaints, and no record of confusion or dissatisfaction amongst retirement savers. In short, there is no record in this period under the interim PTE of a need for a heightened regulatory standard, additional disclosure, or the litigation enforcement mechanism that would come with the BICE in the Final Rule. Since the NAIC's efforts to coordinate a new standard is underway, and industry is on record supporting and promoting a heightened state insurance standard meeting the core goal of the Final Rule, adopting the BICE and the risks of consumer disruption that comes with it – will upend the progress and compliance success to date.

Particularly with the changing circumstances outlined above, creating a brand new distinction between fixed rate and fixed index annuities as suggested under the Final Rule is unnecessary and harmful to retirement savers. Eliminating the distinction among fixed annuities in the Final Rule is also consistent with other regulations and legislation. For example, prior to the Final Rule, all fixed annuities generally were treated the same under federal and state law. Through litigation and legislative re-evaluation of that principle, most recently in Dodd-Frank Section 989J, the parallel regulatory treatment has endured. When fixed rate and index annuities are driven to different distribution channels with

different regulatory standards, as would happen under the Final Rule, consumer confusion, reduced access to products and advice, and compliance favoritism are among the unfortunate byproducts, interfering with the agent's ability to recommend the best retirement product for the retirement investor.

Placing FIAs Under the BICE Creates Uncertainty and Confusion that Threatens Retirement Security

The straightforward distribution model for most FIAs is threatened by putting FIAs into the BICE. As noted above, FIAs fill an important need: exposure to market upside – a feature that serves the best interest of many retirement investors seeking accumulation combined with guarantees – along with the ability to design a program responsive to different needs and risk appetites. Access through IMO and independent agent distribution fulfills that need, and has grown significantly over the past decade as more consumers seek access to these products. Unfortunately, the Final Rule puts this distribution channel in compliance turmoil, which, in turn, reduces consumer access to FIAs and creates significant disruption and uncertainty in the marketplace.

Likewise, the BICE's "interpretation-through-litigation" approach will continue to disrupt access to these important retirement products. The BICE comes with a long list of ambiguities and unresolved questions: what is "reasonable compensation," what are the details around required disclosures, how do companies and consumers flesh out the best interest standard, and what oversight or direct responsibilities attach through the distribution chain. The BICE explicitly supports class action litigation, so while those questions may be answered over time, it might take place over decades of jurisprudence with a potential patchwork of interpretations. This uncertainty and litigation risk may result in carriers offering fewer of these types of products to retirement savers, thus depriving them of the upside potential and downside protection these products afford.
Most concerning is that low- and middle-income retirement investors are the hardest hit. The annuity industry has seen evidence that legal risks and uncertainty are driving advisers away from small IRA investors. Traditionally, small investors could turn to their local insurance agent to assist with retirement income planning solutions through annuities. However, such access to this needed retirement advice may be eliminated under the BICE, hurting low- and middle-income retirement savers the most.

Clarification of IMO Financial Institution Status is Necessary

IMO and independent agent distribution is how FIAs reach consumers today. Roughly 2/3 of all FIAs are sold through this distribution channel. Therefore, it is critical the Department create a pathway for IMOs to continue to distribute FIAs. Under the Final Rule and proposed BIC Exemption for Insurance Intermediaries, the distinction in requirements and regulatory frameworks between RIAs and broker-dealers on the one hand, and IMOs/ agents on the other has added no consumer protection. And, the distinction ironically may drive consumers to less protection and more expensive options, at times, since exemption requirements for IMOs and agents may be more burdensome than exemption requirements for those distribution entities deemed Financial Institutions under the BICE. The

Department will serve the interests of both industry and consumers by placing annuities within PTE 84-24, rather than the BICE. If the Department instead chooses to keep certain classes of annuities within the BICE, significant modifications to the BICE will be necessary in order to avoid the grave market disruption that will otherwise occur.

Grandfathering Provisions Negatively Impact Existing Policyholders

The grandfathering provisions of the BICE[12] prevent many indexed annuity policyholders from receiving advice on their existing IRA policies or ERISA plans. Specifically, insurance licensed only agents who sell FIAs to these types of plans will no longer be able to advise clients on their grandfathered policies and receive compensation for that advice beginning on January 1, 2018. Many independent agents cannot use BICE because they do not have a Financial Institution as defined under BICE and also cannot use the version of PTE 84-24 issued in April 2016 as currently drafted. These agents will be prevented from recommending (or at best be silent on recommending) that clients increase contributions to their plans. This thwarts the Department's efforts to motivate individuals to save for retirement since the agent will be violating the prohibited transaction rules by advising a client to contribute additional amounts to a qualified savings plan while receiving compensation from a third party for the advice. Agents recommending additional contributions to grandfathered fixed rate and index annuity policies should not be subject to the requirements of the BICE. Such policies should be fully grandfathered and not subject to any additional requirements other than those in place at the time the policy was sold.

It is possible for an annuity originally sold to a client and maintained in a non-ERISA qualified plan, such as a governmental 403(b) plan, to be distributed from the plan upon separation from service (or retirement) and rolled over to an IRA without re-applying for a new annuity contract. This is referred to as changing the "line of business" on the annuity from one plan type to another, while keeping the same annuity policy benefits since no new surrender charge periods are added to the contract. The policyholder stays in the same position in the annuity regardless of the change in qualified plan type. Annuity policies sold before June 9, 2017, or a later determined date in qualified plans not regulated by ERISA, should be grandfathered to the same extent annuities in ERISA qualified plans are grandfathered. This allows advisors to recommend changing the line of business on the grandfathered annuity from a qualified non-ERISA plan to an IRA without imposing additional and perhaps prohibitive compliance costs.

Conclusion

IALC is fully supportive of a delay of the Final Rule beyond January 1, 2018 and appreciates the opportunity to respond to the Department's RFI. The interim PTE 84-24 has implemented the core protections necessary to ensure retirement savers receive impartial advice without jeopardizing access to products that are in their best interest, especially those who need principal protection and guaranteed lifetime income. PTE 84-24 in its

[12] Best Interest Contract Exemption, 81 Fed. Reg. 21002 (to be codified at 29 C.F.R. § 2550).

current form is an appropriate exemption for all annuities. Additionally, as the NAIC reviews its suitability guidelines, the Department should prioritize collaborative rule development with the SEC and the NAIC to avoid inconsistent regulatory requirements or overly burdensome regulations that harm low- and middle-income Americans seeking retirement advice and protection. Implementing the Final Rule and subjecting FIAs to the BICE will have just that unintended consequence — reducing access to advisors for low- and middle-income Americans as those advisors focus on the regulatory path of least resistance, not their clients' best interests. To the extent the BICE is implemented, which will have broad and negative consequences for retirement savers, IALC requests the Department fully grandfather continuing advice on any policies issued before June 9, 2017.

Sincerely,

Jim Poolman, Executive Director