

Congress of the United States
Washington, DC 20515

October 2, 2017

The Honorable Alexander Acosta
Department of Labor Secretary
200 Constitution Avenue NW
Washington, D.C. 20210

Dear Secretary Acosta:

We are writing to urge you to make an important revision to the Fiduciary Rule (Rule) if it is not otherwise delayed or repealed. We believe fixed indexed annuities (FIAs), should be moved back from the Best Interest Contract Exemption (BICE) to Prohibited Transaction Exemption 84-24 (PTE 84-24).

Each of us has been closely watching developments and appreciate the Rule has generated considerable controversy. Many of us have differing views about the Rule but we are all committed to improving retirement security for our citizens in view of America's deepening savings crisis. With that in mind, we all agree on at least one thing: the Rule and related Exemptions, if they remain on the books, must be as practical as possible to avoid inadvertently harming consumers or providers of financial services.

One particular concern is the treatment of FIAs, which we believe should be moved back from BICE to PTE 84-24. By returning FIAs to PTE 84-24, FIAs would be grouped properly with other fixed annuities rather than securities products, and would not be subject to ill-fitting BICE requirements that are oriented towards the securities industry's framework and practices. At the same time, sellers of fixed indexed annuities would still be subject to impartial conduct standards that embody the Rule's principal protections.

FIAs are retirement oriented financial products which are popular with consumers because they provide opportunity for growth while still providing guarantees of principal and lifetime income options. FIA sales have been steadily growing over the last fifteen years and exceeded \$60 billion last year. FIAs are popular because they fill an important niche by providing a conservative product for lower and middle class consumers who may not have the wherewithal or capacity to invest in riskier securities products.

Our concern is that FIAs will be at a severe disadvantage in the IRA marketplace if they remain in BICE when it is scheduled to take effect on January 1, 2018. FIAs are sold primarily through independent insurance agents as part of the fixed annuity distribution system. As a practical matter, the independent insurance agency system does not fit the framework of BICE, which is built around the securities brokerage system. Unlike securities broker dealers who control securities agent activities and are therefore able to serve as "financial institutions" under BICE, insurance companies offering fixed annuities do not control independent agents and cannot

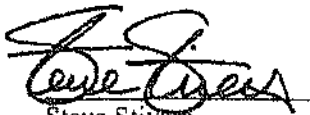
readily provide the warranties required of financial institutions by BICE. DOL recognized this very concern in its proposed rulemaking but has never adequately addressed the issue.

These concerns are compounded by the fact that the securities industry has inherent litigation protections that are not available to the fixed annuity industry. BICE recognizes the securities industry can require disputes be resolved through alternative dispute resolution mechanisms such as FINRA arbitration. BICE also allows securities firms to protect themselves by requiring consumers to waive certain harsher remedies such as restitution and punitive damages. All these safeguards which are designed to balance consumer interests with those of the financial institutions are not available to insurance carriers because state insurance regulation does not generally allow for arbitration or other restrictions on remedies. The result is an uneven playing field under BICE, which will potentially incapacitate the fixed annuity industry with excessive litigation costs.

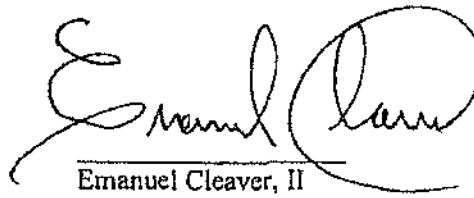
Congress is well aware of the attributes of FIAs and their value to consumers largely because of the adoption of the Harkin Amendment in 2010 as part of the Dodd-Frank Wall Street Reform and Protection Act. In that legislation, Congress essentially declared that any fixed annuity that satisfies state non-forfeiture laws - including FIAs - be treated as exempt from federal securities laws. While we appreciate that the Harkin Amendment was directed at the SEC and its attempts to treat FIAs as securities, we believe the significance of that law should not be ignored here. It is our view that with BICE the Department is implicitly treating FIAs as securities contrary to the intent (if not the letter) of the Harkin Amendment. As long as FIA products satisfy the Harkin Amendment, it is our view that the Department should treat them the same as any other fixed annuity under PTE 84-24.

For these reasons, we are asking the Department to reexamine its position on the treatment of FIAs and move FIAs out of BICE into PTE 84-24 or some more suitable exemption if the Rule and Exemptions are not otherwise delayed or repealed. We believe this is imperative so that the Rule and Exemptions are workable and fair for all concerned parties including consumers and financial services providers.

Sincerely,



Steve Stivers
Member of Congress



Emanuel Cleaver, II
Member of Congress