The COMMITTEE of ANNUITY INSURERS

1455 Pennsylvania Avenue NW, Suite 1200, Washington, DC 20004

September 15, 2017

FILED ELECTRONICALLY

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

Re: Proposed Extension of the Fiduciary Rule's Transition Period (RIN: 1210-AB82)

In response to the Department of Labor's (the "Department's") proposed 18-month extension of the Fiduciary Rule's Transition Period, the Committee of Annuity Insurers (the "Committee") is writing to express its strong support for the proposed extension, and to urge the Department to finalize its extension as soon as possible.

The Committee is a coalition of life insurance companies formed in 1981 to participate in the development of federal policy with respect to annuities. The Committee's 29 member companies represent more than 80% of the annuity business in the United States and are among the largest issuers of annuity contracts to IRAs and employer-sponsored retirement plans. A list of the Committee's member companies is attached as Appendix A.

I. Continuing Uncertainty Warrants Extension of the Fiduciary Rule's Transition Period

Consistent with the Committee's July 21, 2017, comment letter responding to the Department's Request for Information ("RFI") asking whether the Department should delay the Transition Period's current expiration date of January 1, 2018, we continue to believe that a significant delay of the January 1, 2018, applicability date is necessary. Accordingly, we strongly support the Department's proposed 18-month extension of the Fiduciary Rule's Transition Period.

In our July 21, 2017, comment letter, we explained that an extension of the current Transition Period rules is necessary given the large number of unresolved issues that are currently being considered by the Department and the strong possibility that some parts of the Fiduciary Rule will be changed pursuant to the directives announced in the President's February 3, 2017, Fiduciary Duty Rule Memorandum. That uncertainty continues to persist and the

Department's extension of the Transition Period will help alleviate some of the disruptions and dislocations created by such uncertainty.

For the Department's reference we have attached, as Appendix B, the Committee's July 21, 2017, comment letter urging the Department to further delay the Fiduciary Rule's provisions set to become applicable on January 1, 2018. While we will not recount all of reasons discussed in that letter for supporting further delay, we do believe it is important to reiterate in this letter why an extension of the Transition Period is particularly important for annuity issuers and to ensure that retirement savers are not unnecessarily cut off from access to critical lifetime income products.

Although the Department's April 2016 Fiduciary Rule removed variable and indexed annuities from Prohibited Transaction Exemption ("PTE") 84-24, based on the Department's recent RFI questions, we understand that the Department is reconsidering this inappropriate and mistaken shift in the Department's regulation of annuity sales. This critical issue must be resolved before Committee members can begin to meaningfully plan compliance systems and business strategies responsive to the Department's regulation.

The Fiduciary Rule has also created significant gaps for fixed indexed annuities sold through the independent distribution channel – a challenge clearly recognized by the Department through its proposed Best Interest Contract Exemption for Insurance Intermediaries (the "IMO BICE"). As we have previously explained, the analytical underpinnings of the IMO BICE, and its conditions, create significant concerns for Committee members. Therefore, we support the proposed 18-month extension in order to allow the Department to resolve the Fiduciary Rule's "blind spots" for annuities sold through the independent distribution channel and to prevent that market from being totally shut off while the Department works on a solution.

The gaps and uncertainty for annuity sales created by the Fiduciary Rule's development can largely be resolved by making PTE 84-24 permanently available for the sale of all annuities, and allowing PTE 84-24 to cover all forms of commission compensation paid in connection with the sale of annuities. We strongly urge the Department to consider this approach as part of its examination, in addition to finalizing its proposed 18-month extension of the Fiduciary Rule's Transition Period.

Regarding the particular time frame proposed by the Department, we think that an 18-month extension is appropriate. But we reiterate that, once the Department finalizes any changes to the Fiduciary Rule, it will need to give annuity issuers and other affected organizations sufficient time to adjust to its revisions. We believe that the industry will generally need at least one year from the date that the Department announces any final decisions to implement fully these decisions. Determining the actual amount of time necessary for implementing the final decisions, however, will depend on what changes, if any, the Department makes to the Fiduciary Rule. For example, if, as we continue to urge, the Department determines that the transition rule in place for PTE 84-24 will continue permanently, a straightforward and sound solution to many of the issues the Department faces, then annuity insurers and distributors can come into compliance relatively quickly. The salient point is that the 18-month extension of the Transition Period may need to be further extended.

II. Extend the Temporary Enforcement Policy Announced in FAB 2017-02

The Committee also strongly supports a corresponding extension of the Department's temporary enforcement policy announced in Field Assistance Bulletin ("FAB") 2017-02. That enforcement relief complements the Department's Transition Period rules while firms affected by the regulation wait for the Department to determine whether, and how, it intends to revise the Fiduciary Rule. Based on the text of the Department's temporary enforcement policy, the Department's stated rationale for granting temporary enforcement relief, and its repeated assurances to approach Fiduciary Rule implementation with a focus on compliance assistance, rather than citing violations and imposing penalties, we believe that an extension of the Department's temporary enforcement policy is appropriate. Indeed, the extension is necessary in order for the Department to remain consistent with its own guidance since the Department began its presidentially ordered examination of the Fiduciary Rule. It is, of course, critical that parallel relief be provided by the Internal Revenue Service with respect to the excise tax under section 4975 of the Internal Revenue Code.

III. No New or Additional Conditions for Eligibility Under an Extended Transition Period

The Committee strongly opposes any new or additional conditions for eligibility under the extended Transition Period being proposed by the Department. Our opposition to such an approach is based on three main reasons.

First, the regulatory uncertainty providing the basis for the current Transition Period has not changed since its announcement. The Department should not change the conditions for its transition relief in the absence of any changes to those circumstances.

Second, the Department's discussion of additional conditions in the preamble to its proposed exemption suggests that its conditional relief could be limited to firms pursuing specific products and services. We strongly oppose that approach because we are concerned that it could stifle innovation in product and advice models. We also oppose that approach because the Department should not substitute its own investment preferences for the preferences and insights of advisers working directly with their clients.

During the Fiduciary Rule's development, the Department did substitute its own investment preferences for the preferences of advisers working with individual investors, and those policy choices have, as highlighted in our prior comment letters, already resulted in reduced access to important lifetime income products. In our comment letter responding to the Department's Fiduciary Rule RFI, we discussed the dangers of this kind of "regulatory arbitrage" in the context of the artificial lines the Department has drawn among different types of annuities for purposes of PTE 84-24.[1] The Department's rulemaking has also favored fee-based accounts over commission-based accounts in other ways. Given this recent history, we are very concerned about regulatory developments that can inappropriately dictate which products are being developed and sold, rather than what is best for the client. The type of conditional relief contemplated by the preamble to the Department's proposed extension could have similar effects. Accordingly, we urge the Department not to take any action that would draw lines between: (a) firms that intend to promote products and services that may be eligible for an exemption developed in the future; and (b) firms that are not pursuing such products and services.

Third, we are concerned that the conditional relief contemplated in the Department's proposal would be too imprecise for any firm seeking to avail themselves of the potential relief.[2] The Department suggests one condition for relief would be a firm "promising" or showing that it will "take steps to harness recent innovations in investment products and services."[3] This is very subjective and indefinite. Given the significant negative consequences triggered by a failure to comply with *all* conditions of a prohibited transaction exemption, firms affected by the Fiduciary Rule cannot operate with any uncertainty regarding their compliance with an intended exemption. We believe it would be difficult for firms affected by the Fiduciary Rule to reach that requisite level of comfort if an exemption were conditioned on the indefinite standards contemplated by the Department's proposal. Specifically, it is difficult to predict which "steps" would actually satisfy those conditions, and it is difficult for any financial institution to "promise" that it will continue to pursue a product or service when additional consideration and study may lead them to conclude that further development does not make business sense.

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For the foregoing reasons, the Committee strongly supports the Department's proposed 18-month extension of the Fiduciary Rule's Transition Period, and urges the Department to finalize this extension as quickly as possible.

If you have any questions, or if we can be of any assistance in your consideration of the issues summarized above, please do not hesitate to contact either of the undersigned at 202-347-2230.

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[1] The Committee of Annuity Insurers' Fiduciary Rule RFI Comment Letter (August 7, 2017), 5.

[2] In addition, we would point out that the Department's description of this "conditional" relief in the preamble is too vague for the industry to provide meaningful comment. If the Department is serious about pursuing this approach, it should first extend the transition period without such conditions and then propose specific conditions that would allow proper notice and comment.

[3] 82 Fed. Reg. 41,365, 41,371 (Aug. 31, 2017).

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Attachments

- Appendix A: List of Committee Members
- Appendix B: The Committee's Previous Comment Letter Urging Delay of the Fiduciary Rule's January 1, 2018, Applicability Date (July 21, 2017)

THE Committee OF Annuity Insurers
www.annuity-insurers.org

AIG Life & Retirement, Los Angeles, CA
Allianz Life Insurance Company, Minneapolis, MN
Allstate Financial, Northbrook, IL
Ameriprise Financial, Minneapolis, MN
Athene USA, Des Moines, IA
AXA Equitable Life Insurance Company, New York, NY
Fidelity Investments Life Insurance Company, Boston, MA
Genworth Financial, Richmond, VA
Global Atlantic Life and Annuity Companies, Southborough, MA
Great American Life Insurance Co., Cincinnati, OH
Guardian Insurance & Annuity Co., Inc., New York, NY
Jackson National Life Insurance Company, Lansing, MI
John Hancock Life Insurance Company, Boston, MA
Lincoln Financial Group, Fort Wayne, IN
Massachusetts Mutual Life Insurance Company, Springfield, MA
Metropolitan Life Insurance Company, New York, NY
National Life Group®, Montpelier, Vermont
Nationwide Life Insurance Companies, Columbus, OH
New York Life Insurance Company, New York, NY
Northwestern Mutual Life Insurance Company, Milwaukee, WI
Ohio National Financial Services, Cincinnati, OH
Pacific Life Insurance Company, Newport Beach, CA
Protective Life Insurance Company, Birmingham, AL
Prudential Insurance Company of America, Newark, NJ
Symetra Financial, Bellevue, WA
The Transamerica companies, Cedar Rapids, IA
TIAA, New York, NY
USAA Life Insurance Company, San Antonio, TX
Voya Financial, Inc., Atlanta, GA

The Committee of Annuity Insurers was formed in 1981 to participate in the development of federal policies with respect to annuities. The member companies of the Committee represent more than 80% of the annuity business in the United States.

The COMMITTEE of ANNUITY INSURERS

1455 Pennsylvania Avenue NW, Suite 1200, Washington, DC 20004

July 21, 2017

FILED ELECTRONICALLY

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attention: Fiduciary Rule Examination (RIN 1210-AB79)
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room N-5655
Washington, DC 20210

Re: Fiduciary Rule Request for Information, Question 1 (Delay)
RIN: 1210-AB79

In response to Question 1 of the Department of Labor's ("the Department") July 6, 2017, Request for Information ("RFI"), we are writing on behalf of the Committee of Annuity Insurers (the "Committee") to urge the Department to *announce as soon as possible* a delay in the January 1, 2018 effective date for certain parts of the Fiduciary Rule.[1] Unless the Department announces very quickly its intent to delay the parts of the Fiduciary Rule due to go into effect on January 1, 2018, issuers of annuity contracts, and others affected by the Fiduciary Rule, will be forced to spend significant sums modifying and building compliance systems in anticipation of a rule that the President has ordered reviewed and that may be significantly changed.

The Committee is a coalition of life insurance companies formed in 1981 to participate in the development of federal policy with respect to annuities. The Committee's 29 member companies represent more than 80% of the annuity business in the United States and are among the largest issuers of annuity contracts to IRAs and employer-sponsored retirement plans. A list of the Committee's member companies is attached.

I. The President's Fiduciary Duty Rule Memorandum Warrants a Delay

On February 3, 2017, President Donald Trump issued a memorandum directing the Secretary of Labor to examine whether the Fiduciary Rule may adversely affect the ability of Americans to gain access to retirement information and financial advice, and to prepare an

[1] For purposes of this letter, "Fiduciary Rule" means the new regulation itself (DOL Reg. § 2510.3-21) and the related new and amended exemptions.

updated economic and legal analysis concerning the likely impact of the Fiduciary Rule.[2] If the Secretary of Labor determines that the Fiduciary Rule adversely affects retirement investors or one of the President's other priorities identified in the President's Memorandum, the memorandum directs the Secretary of Labor to rescind or revise the Fiduciary Rule.

Although the Committee disagrees with the Department's decision not to delay the applicability date of the Fiduciary Rule past June 9, 2017, we appreciate that the Department provided a reasonable approach to prohibited transaction issues for the rest of 2017 by (a) streamlining the requirements of the transition rule for the Best Interest Contract Exemption ("BICE") and (b) delaying the changes to Prohibited Transaction Exemption ("PTE") 84-24, other than the Impartial Conduct Standards.

Nonetheless, a large number of issues remain to be considered by the Department, many of which will, we expect, result in changes to the compliance rules in the BICE and PTE 84-24. The RFI identifies 17 distinct issues (other than the delay) on which it requests comments. The RFI also asks for comments on any issues the Department did not identify. Secretary Acosta and the Department have expressed a sincere desire to seek public input, evaluate those comments, and respond with changes to the BICE and / or PTE 84-24 (or even the regulation itself) as appropriate, as well as coordinating with the Securities and Exchange Commission ("SEC") and other regulators.

Accordingly, since there is now a strong possibility that some parts of the Fiduciary Rule and related exemptions will change, the Department should delay the January 1, 2018, applicability date in order to prevent affected firms, including the Committee's member companies and affiliates, from having to prepare for and implement a regulatory regime that might differ materially from the regime that results from the Department's examination. Without such a delay, affected firms are likely to incur duplicative and unnecessary costs, which, one way or the other, will be passed onto Americans saving for retirement.[3]

Just as important as a delay is the need for firms to have *certainty as soon as possible about whether or not there will be delay*. The scale of changes that are required by the BICE and changes to PTE 84-24 require that firms make major investments starting *right now* to modify and build systems, change compensation policies, modify existing and design new products, obtain regulatory approvals, and train personnel located across the country. The longer the Department waits to announce whether the January 1, 2018 date will be delayed, the greater the possibility of duplicative and unnecessary costs being incurred. Member companies of the Committee are necessarily making decisions right now on how to budget for and how to implement the January 1, 2018 date – a date that is only 165 days from the date this comment letter is due. *Yet, as discussed next, there is substantial uncertainty regarding major elements of the regulatory regime that will apply to annuity contracts after December 31, 2017.*

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[2] Fiduciary Duty Rule Memorandum, 82 Fed. Reg. 9675 (Feb. 7, 2017) (the "President's Memorandum").

[3] As discussed in Parts II and III below, the potential for incurring duplicative and unnecessary costs absent a delay is particularly high for life insurance companies issuing annuity contracts because of uncertainty regarding the basic framework that will be applicable to annuity contracts after December 31, 2017.

II. A Delay is Needed Because Annuity Issuers Do Not Know the Post-December 31, 2017 Framework for Compliance

The member companies of the Committee and other life insurance companies issuing annuities to plans and IRAs are particularly affected by the uncertainty during this transition period because it is unclear which annuities can be sold under PTE 84-24 on or after January 1, 2018. Under the transition rule announced by the Department in April 2017, all annuities can be sold under PTE 84-24, as in effect prior to the changes made by the Fiduciary Rule, as long as the Impartial Conduct Standards are followed. In the short period between April 4, when the new rules for the transition period were announced, and June 9, 2017, when they went into effect, issuers of annuities scrambled to prepare to comply with the updated PTE 84-24 or the transition BICE rules. PTE 84-24 disclosures were prepared, and compliance systems implemented, as best as possible in that short two-month period. In many cases, processes are necessarily manual rather than automated, which ensures that compliance will be less efficient and more costly than reasonable certainty and a reasonable implementation period make possible.

But the future is far too uncertain for annuity issuers to plan for January 1, 2018. The Department has asked in the RFI whether it would facilitate advice to expand the scope of PTE 84-24; the Department would not ask this question unless it meant to seriously consider that change. So will PTE 84-24 continue to be available for annuities other than fixed rate annuities? If not, what conditions will apply to fixed indexed and variable annuities under BICE? In other words, the very framework for compliance of annuities with the prohibited transaction exemptions is not known. Are annuity issuers expected to hazard a guess as to the alternative that they think is most likely to be adopted by the Department and then expend significant resources to build out that framework? The Department has also asked for comments on fee-based annuities, and suggests it may issue a new exemption for fee-based annuities. Should a life insurance company begin or continue to develop fee-based annuities? If so, what conditions might be placed on product features, or will apply to their distribution? This simply cannot be determined at this time.

When the Department decided not to delay the June 9 deadline, its stated reason was the costs associated with a delay. The Department needs to take into account, however, that *each day it leaves the industry with uncertainty also has costs*, not the least of which is attempting to develop and implement involved compliance programs and products that may turn out to be inconsistent with – or even incompatible with – the compliance framework eventually decided upon by the Department.

III. A Delay is Needed Because the Department has not Developed a Solution for the Distribution of Fixed Indexed Annuities

As the Committee explained in its February 21, 2017 comment letter regarding the proposed Best Interest Contract Exemption for Insurance Intermediaries ("the IMO BICE"), the Department's Fiduciary Rule created large access and distribution gaps for fixed indexed annuities when it removed fixed indexed annuities from PTE 84-24 and simultaneously failed to create a feasible exemption for fixed indexed annuities sold through the independent agent distribution channel. The existing BICE, which is the sole exemption under which fixed indexed annuities can be sold, does not provide such an exemption.[4]

In recognition of the major gap created by the Department's changes, the Department proposed a new prohibited transaction class exemption for the sale of Fixed Annuity Contracts being sold through insurance intermediaries, like independent marketing organizations, field marketing organizations, and brokerage general agencies (collectively referred to herein as "IMOs"). The proposed IMO BICE was not released until January 19, 2017, allowed only a 30-day comment period, had substantial deficiencies, and has not yet been finalized.

Firms that issue and distribute fixed indexed annuities face an even bigger challenge in preparing for the January 1, 2018, date because, as of right now, there is no workable solution to the gap the Department created. Even if the IMO BICE were finalized today, few, if any, of the firms for whom the IMO BICE is intended would be able to design and implement the required policies and procedures by January 1, 2018. Moreover, the annual sales requirements contained in the proposed IMO BICE make it unclear whether many IMOs will even be eligible for the potential exemption intended for them.

The Department does have a workable solution to this problem, however, which is to make PTE 84-24 available for all annuities, and cover all forms of commission compensation paid in connection with the sale of annuities, as is the case during the transition period. This is the approach the Committee has consistently advocated. Ideally, the review ordered by the President would lead to recommendations or a result that would eliminate the need for a specific IMO exemption altogether. But if the Department decides instead to issue a special exemption allowing IMOs and others to qualify as "Financial Institutions," that solution simply cannot be implemented in less than six months. It requires a wholesale reworking of the independent agent distribution marketplace and entails significant changes to the legal, compliance, financial, and contractual relationships among agents, IMOs, and insurers. These changes cannot begin to be negotiated, let alone finalized and implemented, until the conditions of the exemption are finalized.

[4] The existing BICE conditions relief upon a "Financial Institution" entering into a contract with the purchaser of an annuity and agreeing to accept certain new legal obligations outlined by the exemption. For purposes of the existing BICE, a Financial Institution can only be a bank, broker-dealer, insurance company, registered investment adviser, or any entity that is described as a Financial Institution in an individual exemption granted by the Department. IMOs are not typically organized as one of those enumerated entities and the Department has not yet granted any individual exemptions. This means that IMOs and other insurance intermediaries cannot serve as a Financial Institution for purposes of the existing BICE and are not eligible for any exemption that would permit the sale of fixed indexed annuities through the independent distribution channel, unless the insurance company or some third-party entity agrees to serve as a Financial Institution. Because the IMO is truly independent, the insurance company or a third-party entity lacks the supervisory authority and oversight appropriate for an entity serving as a Financial Institution under the BICE.

IV. Significant Time is Needed After the Department Finalizes any Changes

The Fiduciary Rule affects nearly every interaction an insurance company and its employees, agents, and brokers have with nearly every plan and IRA owner. Accordingly, in 2015, we urged the Department to provide a three-year implementation period between the Fiduciary Rule's final publication in the Federal Register and its eventual effective date.

One particular challenge Committee members have identified is the long period of time that is required to properly educate and train agents and brokers about a firm's approach to the Fiduciary Rule. This process of educating and training agents and brokers about their new duties, new procedures, and new disclosures cannot commence until firms have made decisions about how they will approach the Fiduciary Rule, especially if the procedures differ depending upon the type of annuity. And these decisions cannot be made until firms' legal, compliance, and business units evaluate and understand the Fiduciary Rule. And that evaluation and understanding cannot begin until the Department finalizes any changes.

Given the scope of the issues raised in the President's Memorandum and the questions the Department has asked in the RFI, no insuer or other firm can reliably conclude that the changes to BICE and PTE 84-24 as currently published in the Federal Register will go into effect on January 1, 2018. And they cannot begin the process of training agents and brokers, or even designing those training programs.

V. The Uncertainty is Also Having an Effect on Savers

We understand from Committee members that insurance licensed-only agents are hesitant to stay in the middle income IRA market due to (1) uncertainty as to whether they can continue to service the client when they do not have a qualified "financial institution," (2) fear of their compensation being reduced to such an extent it jeopardizes the existence of their business, and (3) costs of compliance and record retention. Without advisors encouraging lower and middle income individuals to save for retirement, such people often will not save at all. Saving money in an IRA (or otherwise) is a voluntary action and without advisors reminding clients to save, many more will procrastinate or not save. This highlights the need for the Department to signal to those on the front line with savers that the Department will not let the changes due to go into effect on January 1, 2018, occur unless and until it has developed a solution to the disruptions caused by the removal of variable and fixed indexed annuities from PTE 84-24.

VI. At Least One Year is Needed From the Date DOL Finalizes any Changes

The amount of delay that will be needed depends on what changes, if any, the Department makes to the Fiduciary Rule. For example, if, as we continue to urge, the Department determines that the transition rule in place for PTE 84-24 will continue permanently, a straightforward and sound solution to many of the variety of issues the Department faces, then the annuity industry can come into permanent compliance relatively quickly. But the Department presumably cannot make that determination until it has finished its full review, and it needs to provide guidance regarding the January 1, 2018 effective date much more quickly.

The Department should be realistic about the time it will take to resolve the issues raised in the President's Memorandum and the RFI. Given the Secretary's entirely appropriate insistence on compliance with the Administrative Procedures Act, the Department cannot propose and finalize amendments to the regulation, the BICE, PTE 84-24, or the IMO BICE, or propose and finalize new exemptions, before 2017 ends. And the industry will need at least one year from the date that the rules of the road are determined to come into compliance. *Therefore, the Department should as soon as possible announce a delay of at least one year from the date on which it realistically believes that it can finalize any changes*.

* * *

For the foregoing reasons, the Committee believes a delay in the January 1, 2018 deadline is necessary, and urges the Department to make its decision as quickly as possible.

If you have any questions, or if we can be of any assistance in your consideration of the issues summarized above, please do not hesitate to contact either of the undersigned at 202-347-2230.

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Attachment