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Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Fiduciary Definition Hearing, Room N-5655
U.S. Department of Labor
Constitution Avenue, NW
Washington, DC 20210

Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW, Suite 400200
Washington, DC 20210

**Re: Definition of the Term "Fiduciary"; Conflict of Interest Rule (RIN: 1210-AB32);
Proposed Best Interest Contract Exemption (ZRIN: 1210-ZA25);
Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction
Exemption (PTE) 84-24 for Certain Transactions Involving Insurance Agents and
Brokers, Pension Consultants, Insurance Companies and Investment Company
Principal Underwriters (ZRIN: 1210-ZA25)**

To Whom It May Concern:

Pacific Life Insurance Company is submitting this letter to comment on the proposed rule and prohibited transaction exemptions promulgated under Sections 3(21)(A)(ii) and 2510.3-21 of the Employee Retirement Income Security Act ("ERISA") (collectively, the "Proposal").

About Pacific Life

Founded in 1868, Pacific Life Insurance Company ("Pacific Life") provides life insurance products, annuities, and mutual funds, along with a variety of investment products and services, to individuals, businesses, and pension plans. Its headquarters is in Newport Beach, California. Pacific Mutual Holding Company is a mutual insurance holding company, formed in 1997, whose members are policyholders and contract holders of Pacific Life Insurance Company. As a mutual holding company, we have no publically traded stock; we are an independent company that remains focused on long-term strategies and financial strength so that we can make decisions that benefit our policyholders and clients. As of December 31, 2014, Pacific Mutual Holding Company had \$137 billion in company assets and was ranked the 18th largest life insurance company in the United States.

We anticipate letters to you from others, including the American Council of Life Insurers (“ACLI”), our national trade association, the Committee of Annuity Insurers, Insured Retirement Institute (“IRI”) and the Chamber of Commerce, that will provide a general discussion about the important role annuities play in retirement planning, how our industry works, and how our products and sales practices are regulated. While we fully support the industry’s concerns and opinions on this issue, the purpose of this letter is to share our view.

Our Role as Product Manufacturer That Does Not Have a Captive Distribution System

At Pacific Life, we distribute our retirement-oriented individual variable annuity, fixed annuity and mutual fund products primarily through non-captive, independent¹ annuity producers/registered representatives. They are employed by, or under contract with, their respective third-party FINRA (Financial Industry Regulatory Authority) member broker-dealer firms. We also distribute our fixed annuity products through non-captive, independent annuity producers who are not affiliated with broker-dealer firms. Registered representatives and producers must be state insurance licensed and appointed by Pacific Life in each state where they sell Pacific Life annuities.

Pacific Life does not have programs to incent these independent producers to sell our products through the offer of perks (i.e. cruises, rings, stock options, iPads, etc.). With the sale of a Pacific Life variable annuity or mutual fund, a commission is paid to the broker-dealer firm who, in turn, pays the producer/registered representative. If no broker-dealer is involved and the sale is for fixed annuities, a commission is paid directly to the producer. Pacific Life may also pay additional compensation as permitted by the Securities and Exchange Commission (“SEC”) and FINRA to certain broker-dealer firms. This can be used by these firms for conferences, educational seminars, training, sales promotions, etc. Like the compensation paid to registered representatives/producers, such additional compensation, including its potential for conflicts of interest, is fully disclosed to annuity and mutual fund purchasers in the product prospectuses.²

Pacific Life also offers a line of group annuity products that are distributed through qualified plan experts. Some of these products are sold directly to plan sponsors but the majority are placed through independent producers, as described above. No commission is paid by Pacific Life for direct placement.³

We Support the Best Interest Standard

Pacific Life always has and will continue to support the goals, concepts and expectations espoused in section 913 of Title IX of the Dodd-Frank Act—that is, to protect retail customers by ensuring that, regardless of the source of personalized investment advice, it is given under a uniform standard of care that protects the best interest of the customer. Both investment advisers and broker-dealers should be held to this standard.

¹ Captive agents typically represent only one company and are limited to the products, placement guidelines and pricing structure of that one company. Independent agents (producers) typically represent more than one insurance company, thus offering broader choices of products.

² See Pacific Life annuity prospectuses at www.pacificlife.com

³ The Proposal collectively refers to Broker-Dealers, Registered Representatives, Producers and Insurance Agents as “Investment Advisers”. The remainder of this letter adopts the same nomenclature.

With this in mind, Pacific Life shares the Department of Labor's ("Department" or "DOL") goal of protecting Retirement Investors and their savings, and appreciates the detailed thinking involved in the Department's Proposal. However, in the interest of providing those selfsame Retirement Investors with continued access to the entire range of retirement guarantees and investment opportunities currently available, and considering the potentially significant industry-wide impact of the changes, **Pacific Life reiterates its request, and the request of our industry trade associations, that the time frame for meaningful review of and comment on the Proposal be extended. We also ask that the following key points be considered.**

The Importance of Annuities in Retirement Planning

An annuity is, first and foremost, an insurance contract that guarantees lifetime income.⁴ Pacific Life is concerned that in the 800 plus pages of the Proposal, it appears there is insufficient acknowledgement of the unique advantages that annuities provide to consumers when planning for retirement and the different types of annuity products available to meet specific consumer needs. Lumping annuities together with all other securities based investments indicates there may be a misunderstanding about their unique features and the protection they provide as part of a retirement plan. No other investment, or collection of investments, can make this promise to a retiree: With an annuity, you can never outlive your income. For Retirement Investors looking to create the same security that previous generations enjoyed from their defined benefit pensions, annuities are the only option. The evidence to support their importance in this regard is validated by the most recent release of final rules to qualified longevity annuity contracts (QLAC) by the U.S. Department of the Treasury and the Internal Revenue Service.⁵

Example

While every annuity contract owner has unique reasons for investing a portion of their retirement funds in an annuity, there is one common theme that makes them particularly important for the consumer: It's difficult to predict the future.

Consider a retired couple, the Smiths. They have an IRA worth \$650,000 that they are using to supplement their social security in their retirement. Mr. Smith worked hard all his life and has managed their nest egg wisely. Unfortunately, at 68, he was diagnosed with an illness that will make it impossible for him to continue actively managing the money. Mrs. Smith is willing and able to take over their financial decisions but is faced with different decisions about their future than for those they had planned. If a portion of their IRA was in an annuity, it would provide the Smiths with insurance benefits and guarantees that help deal with these unexpected challenges—and which are not available through any other investment product. For example, annuity living benefit riders can protect the couple's original purchase price for future retirement income needs, regardless of a decrease in account value

⁴ Letters from trade organizations mentioned above will include additional information about annuity product features and guarantees.

⁵ "Today, the U.S. Department of the Treasury and the Internal Revenue Service issued final rules regarding longevity annuities, which can help retirees manage their savings and ensure they have a stream of regular income throughout their advanced years. These regulations make longevity annuities accessible to the 401(k) and IRA markets, expanding the availability of retirement income options as an increasing number of Americans reach retirement age." Press Center release "Treasury Issues Final Rules Regarding Longevity Annuities", dated July 1, 2014

due to market conditions. This insurance feature has provided a real and substantial benefit to thousands of annuity owners during and after the 2008 crisis when their nest eggs were cut in as much as half. Death benefit guarantees are also a unique feature of annuities. If an owner dies when the market value of the contract decreases, the death benefit feature guarantees that a beneficiary receives an amount at least equal to his or her original purchase price.

In fact, in 2008-2010, when some account values had decreased by as much as 50 percent, Pacific Life paid out \$198 million in death benefits that exceeded the actual account value to over 22,000 beneficiaries. These insurance benefits were not available to Retirement Investors whose money was invested solely in low-cost mutual funds or other, non-insurance products.

	2008	2009	2010	Total
Number of Annuity Death Claims	7,033	7,417	7,647	22,097
Death Benefits in Excess of Account Value	\$48,238,539	\$107,311,373	\$42,538,426	\$198,088,338

To help ensure variable annuities are used properly, the SEC's and FINRA's regulatory requirements provide for broad-based fair dealing, just and equitable principles of trade, suitability and supervision requirements. In addition, state insurance laws also require a suitability assessment in the sale of fixed and variable annuities. Combine an active examination and enforcement program with strong written supervisory requirements and comprehensive oversight of firms' advertising, and the result is a very strong and effective regulatory framework. Although the suitability standard has been repeatedly denigrated in the discussions about the Proposal, properly used it is difficult to come up with an example of a suitable investment that is not in the client's best interest (even when including the Investment Adviser's compensation).

Here's why: Under the current regulatory framework, an Investment Adviser should be walking their clients through the pros and cons of a variety of investment choices, including annuities and long-term care insurance, not solely investment products like mutual funds. It is not our opinion that every investor should have their entire retirement savings in an annuity, but certainly consideration of the benefits an annuity can provide should be in the mix. Before selling any annuity, the recommendation would have to undergo a rigorous suitability assessment, where detailed information about the client's overall investment portfolio is reviewed by the Investment Adviser. The recommendation would then be reviewed by his/her supervisor, and the supervisor would have to concur with the recommendation in writing. The recommendation is also required to be available to the firm's compliance department and FINRA for review upon examination, as well as state insurance regulators. Any conflicts are required to be disclosed as part of the process, and the clients are required by current law to receive product guides and prospectuses, when applicable, which provide comprehensive information as well as disclosure about the product's features as well as its risks, fees, etc. There is no perfect regulatory map, but the current regulatory system encourages a culture of compliance, demands proper supervision and management, and holds firms and Investment Advisers accountable should they fall short of these standards. It is a very strong, multi-tiered, effective regulatory structure that works for the vast majority of Retirement Investors, the vast majority of the time.

It is not always appropriate to compare insurance and investment products in isolation from an individual consumer's overall portfolio, risk tolerance, time horizon, financial goals, liquidity, etc. As Secretary Perez has said, we must also take into consideration the consumer's financial literacy, which typically influences these types of consumer decisions.

Unlike most insurance products, people are not prone to choose to buy an annuity on their own. But there are many financial products like this. When purchasing a mortgage, the lender may require a borrower to buy homeowner's insurance. States mandate auto insurance, taking that insurance need/purchase decision from the consumer. With annuities and life insurance, unless someone is repeatedly advising consumers of the need--advising them of the risk to you or your family of dying too soon or living too long--and continually educating them on available products and their benefits, most people are not likely to go annuity shopping. As Secretary Perez correctly pointed out in his speech at the Brookings Institute⁶, we have a long way to go to educate the public on financial matters. This education should include annuities and the protections inherent in the product.

PTE 84-24 Should Continue to be Available for all Annuities

Prohibited Transaction Exemption (PTE) 84-24 should continue to be available to allow the receipt of commissions for the sale of all annuity and insurance products, including variable annuities, to retirement plans, including IRAs. Variable annuities are first and foremost insurance products that provide the same protections and guaranteed lifetime income available through fixed annuities. Variable annuities differ from fixed annuities regarding how the underlying asset is valued and invested. However, because of their characterization as an insurance product, subject to all the same regulations and requirements imposed on fixed annuities, there must be an understanding that variable annuities are not simply a "package" or "bundle" of mutual funds. It is important for the Department to recognize that the most important components of a variable annuity product (e.g. protection and guaranteed lifetime income) have more in common with fixed annuity products than they do with mutual funds. This is why the proposed amendments to PTE 84-24 for the sale of annuities should be revised, continuing to keep all annuities, fixed and variable, in the same category of "insurance." Doing otherwise could mislead consumers. When an Investment Adviser presents the expense comparisons required under the Best Interest Contract (BIC) Exemption comparing a variable annuity to a mutual fund, the comparison will tend to confuse the Retirement Investor, because the Retirement Investor is not simply paying for investment advisory and administrative fees. He/she is also purchasing insurance features. In other words, the Proposal leans too heavily on looking at overall cost as an indicator of what is in the client's best interest.

When comparing the overall cost of non-insurance investments available to plans and IRAs to a variable annuity, without taking into account the insurance components that make up the total expenses of the variable annuity, an annuity will always appear more expensive. Comparing non-insurance investments to a variable annuity simply based on cost is analogous to a consumer shopping for a motor vehicle based on cost. Just because they are both forms of transportation, it would not make sense to base the buying decision on a comparison of the cost of a motorcycle to a sedan. If the decision was based purely on cost, the sales person would always have to recommend the lower cost motorcycle as being in the customer's best interest. If the need of the consumer however would necessitate the purchase of the

⁶http://www.hamiltonproject.org/files/downloads_and_links/promoting_financial_well_being_in_retirement_transcript.pdf

higher cost sedan, the next step would then be to determine the preferred model and consider the difference in costs based on the desired and available options.

PTE 84-24 can meet the Department's goal of consumer protection by including both fixed and variable annuity sales to plans and IRAs as both products are insurance.

The Proposal's Unintended Impact to Annuity Access

We all want what is in the client's best interest and realize that it will more likely be a variety of investments and products that meet the consumer's overall financial goals and long-term retirement savings needs. To achieve this goal, consumers must have access to a wide variety of retirement savings options. While an annuity may not be the correct choice in every situation, neither is it always the wrong choice. We are very concerned that the Proposal will make access to annuity products more difficult because it will be harder to comply with the new rules when considering the inclusion of insurance products in a client's overall retirement savings plan. The proposed rules are so complicated and fraught with uncertainties, we believe that many financial representatives who currently make the extra effort to inform their clients of the benefits of insurance products like annuities will no longer sell these products because the representatives' personal risk/reward is diminished by unwieldy regulatory and legal risk.⁷ As a result, we will have failed in our goal, and consumers would not be exposed to the benefits of these products or the role they can play in an overall retirement strategy.

Proposal's Impact on Small Business 401(k)s, SEP IRA & SIMPLE IRA

Small businesses are in a unique position to help make the greatest changes in retirement savings in the United States. According to Small Business Administration ("SBA") statistics, small businesses employed about half of the nation's private workforce in 2012. Most employers see significant value in investing in their employee's wellbeing. Stability in the workforce provides many benefits to employers and employee benefits help retain valuable employees and provide that stability. However, under the current Proposal, the efforts of these employers may be curtailed. This is because Investment Advisers working with businesses with 100 or fewer employees would be denied access to the "Seller's Carve-Out" provided for larger employers. Small employers should be given the same access to education about investment and product options as larger employers under whichever compensation structure they choose (subject to full disclosure). Under the Proposal, small business owners are, without factual basis, assumed to be financially unsophisticated, requiring a higher level of protection than their counterparts with 101 employees. Enactment of the Proposal in its current form leaves these small businesses with reduced access to full information and education about the options available to meet the retirement needs of their employees.

⁷ For reports and articles about the possible impact of the Proposal on Financial Advisers see: Deloitte Touche Tohmatus Ltd., "Bridging the Advice Gap, Delivering Investment Products in a Post-RDR World," June, 2012; Mark Schoeff Jr., "FINRA's Ketchum Criticizes DOL Fiduciary Rule," Investment News, May 27, 2015; Mark Schoeff Jr., "DOL Fiduciary Opponents Point to UK Experience to Bolster Their Case," Investment News, March 19, 2014; Association of Professional Financial Advisers, "The Financial Adviser Market: In Numbers," Edition 3.0, April, 2015

Pacific Life Specific Recommendations/Questions Concerning the Proposal

Request for a Manufacturer's Carve-Out

While Pacific Life fully supports a Best Interest Standard in the sales process, the Department should clearly state in the Definition of Fiduciary and in the proposed BIC Exemption that the Fiduciary Standard does not apply to the manufacturer company issuing an annuity, insurance or investment product in the ordinary course of its business as long as the company and its employees do not render investment advice for fee or compensation or represent or acknowledge that it is acting as a fiduciary.

Under state insurance laws, insurance products can only be sold by state licensed producers (agents) that are appointed (authorized) as agents by each insurance company whose product the agent sells. The appointment is the mechanism to tie the insurance company to the acts of the agent when selling that company's products under state insurance law. Based on the appointment under state insurance laws, it is ambiguous in the Proposal whether simply as a result of such state law appointment: a) a product manufacturer/issuer can become an ERISA fiduciary; or b) be required to enter into a BIC even if the product manufacturer is totally removed from the individualized investment advice being recommended to the client as specified in the Proposal. An example of this fact pattern is attached as Appendix 1.

We believe based on our reading of the Proposal, commentary thereto, and public comments from the Department that the DOL did not intend an insurance product manufacturer or other investment product issuer to be considered a fiduciary simply by issuing its products. This is similar to how under existing ERISA law mutual funds' issuers would not be considered fiduciaries simply by being the chosen investments in a wrap account set up and recommended by an ERISA fiduciary investment adviser. Stated another way, we believe that adding liability for product manufacturers who play no part in making individualized investment recommendations is not a "gap" that the DOL is trying to close through this Proposal.

To remove any doubt on this issue and to avoid any future disputes as to your intent, we recommend the following specific "carve out" from the definition of fiduciary for a manufacturer/issuer that does not directly render personalized investment advice or make individualized recommendations to the public.

Sec. 2510.3-21 Definition of "Fiduciary."

Manufacturer/Issuer of Insurance or Investment Products. (1) An Insurance Company or other manufacturer/issuer of investment products shall not be deemed to be a Fiduciary, within the meaning of section 3(21)(A) of the Act or section 4975(e)(3)(B) of the Code, with respect to an employee benefit plan or IRA solely because such Insurance Company or other manufacturer/issuer of investment products issues annuity or other insurance or investment products to such plan or IRA in the ordinary course of its business if the Insurance Company or other manufacturer/issuer of investment products or their employees do not:

(A) Render investment advice (as defined in paragraph (a) of this section) for a fee or other compensation related to such advice with respect to such insurance or investment products (as opposed to compensation for the product itself or services related thereto).

(B) Represent or acknowledge that it is acting as a fiduciary within the meaning of the Act with respect to the advice described in paragraph (a)(1) of this section.

(C) Render advice pursuant to a written or verbal agreement, arrangement or understanding that the advice is individualized to, or that such advice is specifically directed to, the advice recipient for consideration in making investment or management decisions with respect to annuities, insurance or other investment products it manufactures.

(2) For purposes of this section, an Insurance Company in its capacity as a product manufacturer/issuer is not considered a Fiduciary, Affiliate or a Financial Institution merely because a state insurance licensed and appointed agent, agency or their representatives, and state and federal securities licensed advisers or firms, who may or may not be a Fiduciary pursuant to this section, are required by state insurance laws to be appointed or otherwise authorized to sell the Insurance Company's products.

1) Who are the Parties to the Best Interest Contract Exemption?

If the Department does not specifically exclude the manufacturer insurance company as recommended above, clarification about who must sign the Best Interest Contract ("BIC") is requested.

Under the Proposal, a Fiduciary who wants to receive a commission or other compensation (12b-1 fees and revenue sharing payments) from a 3rd party in connection with transactions involving an IRA or 401(k) must enter into a written Best Interest Contract or "BIC." The Proposal states that the contract is between three parties: the Investment Adviser, the Financial Institution and the Retirement Investor. However, the BIC Exemption definition of a Financial Institution includes an insurance company [Section VIII (e)(3)].

Pacific Life considers itself a "manufacturer" insurance company. We do not sell products directly to consumers. We rely exclusively on non-captive, independent annuity producers/registered representatives to distribute our products. Furthermore, in almost every instance, our products are not the only possible product solutions (from a product manufacturer perspective) that independent investment advisers present to their clients.

For Pacific Life, without a specific manufacturer/issuer carve out, the following questions still need to be addressed. Does the Department intend that the manufacturer insurance company—one that does not have a captive sales force and does not act as the broker-dealer for the independent Investment Advisers—be a party/signatory to the required contract under the BIC Exemption? If the manufacturer insurance company is meant to be a party to the BIC, in order for the Investment Adviser and Broker-Dealer to rely on the exemption to accept commissions from the manufacturer, is the manufacturer also required to act as a fiduciary by putting the best interest of the client ahead of all other interests? In order to fulfill a fiduciary duty to the Retirement Investor, would the manufacturer insurance company be required to determine if its own product is in the best interest of the client, and make an independent determination that there are no other investments or products that would be better?

A) Timing of BIC Execution

In the event that the answer to the first question in (1) above is in the affirmative, the Proposal requires the BIC to be signed prior to a recommendation or advice to purchase, sell or hold an asset. At that

point in the process, the manufacturer insurance company is not in a position to know the Retirement Investor in sufficient detail that it can make a determination about what is in the best interest of that individual, even in light of FINRA and state specific suitability review processes. Typically, at this point of the conversation, an Investment Adviser does not even know if an annuity is a possible recommendation, or the insurance company whose product the Investment Adviser might recommend (most of Pacific Life advisers sell several companies' products). Pacific Life believes that the timing of the BIC acknowledgement (prior to any recommendation being made) is impossible for the manufacturer insurance company to satisfy. The result would be the assumption of a fiduciary duty prior to having any knowledge about the Retirement Investor, including his/her identity.

Pacific Life requests that the Department consider the remote nature of the relationship between the manufacturer and Retirement Investor and clarify that the required parties to the BIC Exemption does not include manufacturers such as Pacific Life unless Pacific Life or its employees are actively engaged with the client in the recommendation of our products.

2) When Does Education Become Advice?

Pacific Life employs individuals whose primary responsibilities include regular conversations with Investment Advisers (defined by the DOL proposal as Fiduciaries) to educate them about Pacific Life products and features (a "Wholesaler"). A normal conversation may include the Investment Adviser describing a particular client's financial situation and retirement needs, and the Wholesaler responding to the Investment Adviser by providing detailed and specific information about Pacific Life products that may provide solutions to meet those needs. Investment Advisers regularly have conversations with Wholesalers from multiple manufacturer companies in order to determine the best fit for the Retirement Investor. The Wholesaler plays no role in the ultimate recommendation or determination about whether the Pacific Life product is in the "Best Interest" of the specific Retirement Investor. That determination is made between the Investment Adviser and the client.

Furthermore, Pacific Life offers a number of institutional products designed to help plan sponsors who are looking for assistance in managing the funding status of their defined benefit plans and paying out annuity benefits to retirees and plan participants. When offering such products, our Wholesalers talk directly with plan sponsors, brokers and/or consultants.

Activities like this, where Pacific Life engages as a manufacturer insurance company to educate the independent Investment Advisers that sell our products (who may be acting in a fiduciary capacity in certain instances), even absent conversations directly with the Retirement Investor, appear to be included in a plain reading of the proposed "Definition of Fiduciary" and are not clearly carved out as "education."

§ 2510.3-21 Definition of "Fiduciary.

(a) Investment advice. For purposes of section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (Act) and section 4975(e)(3)(B) of the Internal Revenue Code (Code), except as provided in paragraph (b) of this section, a person renders investment advice with respect to moneys or other property of a plan or IRA described in paragraph (f)(2) of this section if—
(1) Such person provides, directly to a plan, plan fiduciary, plan participant or beneficiary, IRA, or IRA owner the following types of advice in exchange for a fee or other compensation, whether direct or indirect:

And,

Executive Summary B. Summary of the Major Provision of the Proposed Rule: The proposed rule clarifies and rationalizes the definition of fiduciary investment advice subject to specific carve-outs for particular types of communications that are best understood as non-fiduciary in nature. Under the definition, a person renders investment advice by (1) providing investment or investment management recommendations or appraisals to an employee benefit plan, a plan fiduciary, participant or beneficiary, or an IRA owner or fiduciary, and (2) either (a) acknowledging the fiduciary nature of the advice, or (b) acting pursuant to an agreement, arrangement, or understanding with the advice recipient that the advice is individualized to, or specifically directed to, the recipient for consideration in making investment or management decisions regarding plan assets. When such advice is provided for a fee or other compensation, direct or indirect, the person giving the advice is a fiduciary.

And,

§ 2510.3-21 Definition of "Fiduciary.

(b) Carve-outs – investment advice. Except for persons described in paragraph (a)(2)(i) of this section, the rendering of advice or other communications in conformance with a carve-out set forth in paragraph (b)(1) through (6) of this section shall not cause the person who renders the advice to be treated as a fiduciary under paragraph (a) of this section...

(6) Investment Education. The person furnishes or makes available any of the following categories of investment-related information and materials described in paragraphs (b)(6)(i) through (iv) of this section to a plan, plan fiduciary, participant or beneficiary, IRA or IRA owner irrespective of who provides or makes available the information and materials...provided that the information and materials do not include (standing alone or in combination with other materials) recommendations with respect to specific investment products or specific plan or IRA alternatives, or recommendations on investment, management..."

A) If the Conversation with an Investment Adviser who is a Fiduciary also Makes the Wholesaler a Fiduciary, is the receipt of Compensation by the Wholesaler Prohibited Without an Exemption?

If the BIC Exemption is available to the Wholesaler, who are the parties to the contract: the Wholesaler (now as Investment Adviser to the Fiduciary), Plan Fiduciary (now as the recipient of such advice) and Pacific Life (as Financial Institution)? Or does some other plan representative, participant or beneficiary need to sign as the Retirement Investor? The Pacific Life Wholesaler is not in a position to know the identity of the Retirement Investor who may or may not choose to purchase the product. How can the BIC be signed and the exemption apply to someone who is merely relaying information about our products if the parties do not know each other's identity? In addition, what compensation would need to be reported as part of the BIC? Only compensation that Pacific Life pays to the Wholesaler, (which is not directly tied to a particular sale), or would Pacific Life be required to disclose all compensation (direct and indirect) received in connection with the product sold? This could be extremely confusing to the Retirement Investor.

B) Related Question:

There is a discrepancy in the language between the proposed rule and the executive summary. Is the inclusion of the words "or fiduciary" after "IRA owner" a typo in the executive summary or are conversations with someone who owes a fiduciary duty to an IRA owner meant to give rise to a fiduciary duty? If this is not a typo and recommendations with someone who has a fiduciary duty to an IRA

owner makes that individual also a fiduciary, then Pacific Life requests clarification of questions 1 and 2 above also in the context of an IRA.

3) When do Factual Conversations about Existing Investments Cross the Line into Investment Advice Subject to the Fiduciary Duty Standard?

Existing Individual Retirement Annuity owners and IRA owners invested in Pacific Life Mutual Funds regularly call Pacific Life customer service employees to ask questions about their annuity contract or fund. They may ask specific questions such as, "Are there any small cap funds available for investment in my variable annuity?" Providing good customer service, the Pacific Life employee checks the correct product prospectus and answers, "Yes, there are three, fund X, fund Y & fund Z." The client then asks the employee, "Which had the best returns last year?" The employee, again responding with factual information available to the client in the prospectus or online answers, "fund Y had the highest returns in the last 12 months." When the client then directs the employee to move their money into fund Y, has the customer service employee, simply by repeating what is in the product prospectus or available on our website, provided investment advice subject to the fiduciary duty standard? Is Pacific Life or its employees a fiduciary by providing customer service support in answering Retirement Investor questions regarding the contractually available investment options which may assist the client in making the decision to invest in fund Y?

4) Orphan Accounts – Variable Annuities and Mutual Funds

As mentioned earlier, Pacific Life does not sell products directly to consumers; however, existing clients are sometimes left without an Investment Adviser due to a change in circumstances. In such a case, Pacific Life is obligated to continue the administration of the annuity contract or mutual fund. These accounts are known as "Orphan Accounts." Existing activity on the account continues as previously directed by the client. For example, if a client has scheduled withdrawals, the withdrawals proceed unless the client notifies us otherwise. If the client wants to make changes to his/her investment allocations or if they want to add money to their account they would be allowed to direct those activities. Pacific Life does not offer investment or retirement advice to the contract/account owner who is in an "orphan" status but does periodically reach out to let them know that they should select a new adviser to service their account.

Would the DOL consider the indirect compensation that Pacific Life receives as a manufacturer of the product as creating a fiduciary duty for Pacific Life for that client for self-directed orphan account activities?

Conclusion

Pacific Life agrees with the Department of Labor that Investment Advisers should be required to act in the best interest of their client. We have shared with you just some of what we believe are concerns about the unintended consequences that come out of this Proposal. We believe that the current Proposal is overly broad, overly complicated and creates an environment where certain products and business models will be so difficult to maintain as compliant that they will likely be abandoned in favor of less burdensome alternatives. We are gravely concerned that, as this Country struggles to address the oncoming retirement crisis, instead of expanding access to quality advice and products and encouraging small plan formation so that more individuals can save for retirement, the DOL's Proposal could make it more difficult for America's workers and retirees to access retirement plans. As

structured, the Proposal potentially has the opposite effect and appears to narrow the ability to receive both affordable and quality investment and product advice, and to receive useful educational information about plans, investments, and lifetime income options.

Pacific Life thanks you for the opportunity to comment on this very significant rulemaking that will impact not only our nation's current Retirement Investors but future Retirement Investors.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sharon Cheever", with a large, stylized initial "S" and a long, sweeping underline.

Sharon Cheever
Senior Vice President and
General Counsel

Appendix 1

State Appointment Scenario

Financial Institution Z is a large, full service, financial services institution. It has a Registered Investment Adviser affiliated entity ("RIA W"), an affiliated retail broker-dealer ("BD X"), and an affiliated licensed insurance agency ("Insurance Agency Y").

Financial Institution Z wants to make available insurance products (including variable insurance products which are securities) to its customers. So, BD X and Insurance Agency Y enter into Selling Agreements with various insurance companies, including Insurance Company A, to make the products of those insurance companies available to their reps for sale to the customers of BD X and Insurance Agency Y.

John Doe, is licensed as an Investment Adviser Representative ("IAR") of RIA W, a registered representative of BD X, and a licensed insurance agent of Insurance Agency Y and is supervised by those entities.

Under state insurance laws, among other requirements, an agent must be "appointed" as an agent by an insurance company to sell insurance products of that particular insurance company. So, John Doe obtains appointment as an agent to all the insurance companies that the entities with which he is affiliated has selling agreements, including Insurance Company A.

Sally Smith is a customer of John Doe. John Doe acts as Sally Smith's investment advisory representative providing investment advice, as her broker for conducting securities transactions, and as an insurance agent for assisting Sally Smith with her insurance needs.

John Doe meets with Sally Smith and, based on financial and other information provided by Sally Smith, recommends in his investment advisory capacity to Sally Smith that she purchase a variable annuity from Insurance Company A in her IRA account to help her meet the retirement savings short fall she currently appears to have and to provide protection against the risks indicated by Sally Smith. John Doe provides that advice in his investment advisory capacity for RIA W, executes the security sale in his registered representative capacity for BD X, and executes the insurance sale as an agent of Insurance Agency Y. The product is manufactured by Insurance Company A.

Under the current construct of the DOL Proposal, the recommendation to purchase the variable annuity by John Doe would arguably create a fiduciary relationship by John Doe; by affiliated entities Financial Institution Z, RIA W, BD X, Insurance Agency Y; and arguably Insurance Company A.

We don't believe the Department intended that the product manufacturer, in this case Insurance Company A, was to be a fiduciary under the proposal merely because state law requires that the persons that sell its products are required to be appointed with the insurance company. Clearly, no recommendation has been provided by Insurance Company A in the above scenario and Insurance Company A should be excluded from the definition of a fiduciary under the proposal.

In fact, under the scenario provided above and in accordance with the current Proposal, in order to comply with the BIC requirements, a BIC contract would have to be executed by Sally Smith, John Doe, and at a minimum, RIA W, BD X and Insurance Agency Y to receive the protections afforded by the

exemption. That would be a five party agreement (not to mention the need for a 6th party if the insurance company manufacturer is not excluded from the definition as requested). In fact, if John Doe is appointed with seven insurance companies and he is uncertain as to the product to be recommended at the time the BIC agreement is executed, all seven insurance companies would be required to sign a BIC with Sally Smith. And, now that they are contractually bound to Sally Smith to be a fiduciary, should the 6 companies whose product was not recommended or sold still have exposure to Sally pursuant to the BIC agreement for the recommendation of the competitor's product by John Doe? The obvious answer would appear to be no.