



February 17, 2017

BY ELECTRONIC MAIL TO E-OED@DOL.GOV AND E-ORI@DOL.GOV

Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Comments on the Proposed Best interest Contract Exemption for Insurance Intermediaries (ZRIN: 1210-ZA25)

Ladies and Gentlemen:

AmeriLife Group, LLC (“**AmeriLife**”) is a national organization and together with its predecessor entities has been in business providing access to insurance products to the insurance marketplace since the early 1970s. As one of the most significant service providers in the fixed indexed annuity marketplace, AmeriLife provides a range of marketing services and access to fixed indexed annuity products that advisers offer their customers.

We appreciate the opportunity to comment on the Department of Labor’s (the “**Department**”) proposed Best Interest Contract Exemption for Insurance Intermediaries (the “**BICE-II**”). Additionally, we appreciate the Department’s efforts to create a path for insurance intermediaries to act as financial institutions. However, there were areas of the proposed BICE-II that raised significant concerns for AmeriLife.

Publication of Audited Financials

Section III (b)(1)(vii) of BICE-II requires the web publication of the Financial Institution’s audited financial statements. The vast majority of insurance intermediaries are private entities that do not freely provide their audited financial statements to anyone who desires to review them. While we support the requirement that Financial Institutions have audited financial statements as set forth in Section VIII(e)(2) and we acknowledge that the Department should be able to review such financial statements on a confidential basis to determine compliance, we do not believe that requiring the publication of previously confidential information advances the public’s interest.

Definition of Financial Institution: Premium Threshold

Section VIII (e)(4) of BICE-II would require an enterprise to “transact sales of Fixed Annuity Contracts averaging at least \$1.5 billion in premiums per fiscal year over its prior three fiscal years.” In the preamble, the Department asked a series of questions related to the premium threshold to which we respond below:

Department Question: Is the \$1.5 billion threshold likely to identify intermediaries with the history and capability of handling supervisory and regulatory compliance of this nature? If there is a threshold, should it be set at a different level?

AmeriLife Response: While an annuity premium threshold should be one component of determining whether an insurance intermediary has the capability of handling the supervisory and regulatory compliance, we believe the Department has placed far too great a weight on this one component in its definition of which intermediaries can be financial institutions.

For instance, a privileged intermediary with a product from a single carrier focused on high net worth clients may be able to meet this threshold without demonstrating strong regulatory compliance. On the other hand, an intermediary with a diverse array of insurance products serving significantly more consumers in the middle market may have the capability of providing supervisory and regulatory compliance, but may struggle on occasion to meet the premium threshold.

Finally, we would note that the premium threshold itself creates an internal conflict of interest for intermediaries. Despite the best of intentions, intermediaries will certainly feel pressure to make additional annuity sales in order obtain or maintain their financial institution status.

Department Question: If a premium threshold is adopted, should it be indexed to grow with consumer price inflation or some other reference?

AmeriLife Response: If adopted, we do not believe the premium threshold should be indexed with consumer price inflation. There are many economic and generational variables that impact the global volume of annuities that may be sold any given year (including the impact that this rule and additional regulations may have on sales of annuities), and these variables do not easily match up with the consumer price index.

Department Question: If a premium threshold is included, is basing it on an average over the prior three years an effective way to account for fluctuations in annual sales to ensure intermediaries have certainty that they will continue to qualify as a Financial Institution? Are there alternative ways to address annual sales fluctuations to provide such certainty?

AmeriLife Response: As noted above, even with the three year average, there will be significant pressure for intermediaries to make annuity sales in order to maintain their financial institution status (especially if the entity has made significant expenditures to build a suitable compliance apparatus) which could potentially create a conflict of interest. In order to mitigate this potential conflict, the Department may want to consider setting a premium threshold as an initial threshold for becoming a financial institution, and then looking to other factors such as number of applications submitted, the number of compliance individuals employed and the reserve requirements in order to maintain financial institution status.

Department Question: In addition to entities that have satisfied the premium threshold, should the Financial Institution definition extend to entities with a “reasonable expectation” of meeting the threshold over the next three years, to ensure that newer or growing entities can more readily become Financial Institutions? Would a subjective threshold of this type provide adequate protections to Retirement Investors? How should the exemption apply to intermediaries that fail to meet the threshold, notwithstanding their previously “reasonable expectation” that they would meet the threshold?

AmeriLife Response: We believe that such a subjective standard would be difficult for the Department to regulate and easily abused.

Department Question: If the exemption did not include a premium threshold, would smaller intermediaries nevertheless be likely to rely on larger intermediaries for exemption compliance due to cost savings, efficiency, or other reasons?

AmeriLife Response: The cost of creating a suitable compliance structure as well as the reserve requirements would likely make it difficult for smaller intermediaries to obtain financial institution status even without the premium threshold. However, there is also the danger of smaller intermediaries skimping on the cost of compliance and simply hoping that no claims are filed.

Department Question: Are there a large number of smaller intermediaries selling fixed annuities that do not work with any other intermediaries that could satisfy the \$1.5 billion or similar threshold?

AmeriLife Response: We would expect that the vast majority of smaller intermediaries would be able to find a larger intermediary that could serve as the financial institution to facilitate sales of fixed annuities at an acceptable cost.

Department Question: Should the premium threshold apply specifically to fixed annuity sales, or should it apply more broadly to all sales of insurance and annuity products? If it applies to insurance sales other than fixed annuities, how should premiums for those sales be measured?

AmeriLife Response: While it makes sense to include some threshold for fixed annuity sales in order to deter intermediaries who are not sufficiently engaged in this marketplace from becoming financial institutions, we do believe all sales of life, health and annuity insurance products should be included. As noted below, one measure may be setting thresholds based on applications submitted. We would recommend a threshold of 20,000 insurance product applications (whether life, health or annuity insurance products) submitted per annum, of which a minimum of 10,000 should be applications for the purchase of fixed annuities.

Department Question: As an alternative or in addition to a premium threshold, should the exemption have a threshold based on the number of annuity contracts sold by the intermediary annually?

AmeriLife Response: As noted above, we would recommend an alternative threshold based on applications *submitted*. Our concern with regard to basing the threshold off of contracts *sold* is that this would create additional pressure for compliance departments to permit sales that may not be in the client's best interest. As noted above, we would recommend a threshold of 20,000 insurance product applications submitted; 10,000 of which must be for fixed annuities.

Department Question: Should a "top tier" requirement replace or be added to a premium threshold requirement? If so, how would the Department define "top tier" status, and should intermediaries be required to have a certain minimum number of contractual relationships with different insurance companies to satisfy such a requirement?

AmeriLife Response: As noted in our application for an individual Prohibited Transaction Exemption, dated August 28, 2016 (the "**AmeriLife Application**"), we believe that another suitable alternative to the premium threshold could be requiring the financial institution to be party to a minimum of ten top-tier wholesale insurance distribution contracts (identified as an IMO, FMO, BGA, SGA, MGA, or equivalent) authorizing the entity to offer and sell an insurance company's products and recruit licensed insurance agents to a platform rather than one or two insurance companies. "Top tier" status would be determined by whether the financial institution receives the insurance company's top tier commission level for the sale of the insurance company's insurance products. This requirement would mean that each financial institution would have significant carrier diversity to provide advisers and clients product choices that are likely to be in the client's best interests.

Department Question: Alternatively, or in addition to, either a premium threshold or a "top tier" requirement, should the exemption require that the intermediary also have agreements to sell fixed annuities with a specified minimum number of different insurance companies? If so, what would be an appropriate minimum number and why?

AmeriLife Response: As noted above, we believe there is a significant benefit to the consumer for the adviser and financial institution to have access to products from multiple insurance companies. We would recommend that the financial institution have a minimum of ten wholesale insurance distribution contracts.

Department Question: Are there other conditions (e.g., minimum number of employees, annual revenue threshold, capitalization requirement) that would satisfy the Department's intent to ensure the covered Financial Institutions are able and likely to comply with the exemption and engage in meaningful oversight of advisers working in the fixed annuity marketplace?

AmeriLife Response: Yes, as described above, we believe that the public would benefit if the threshold includes additional factors in addition to or in lieu of premium of contracts submitted. In particular, we would recommend a threshold of 20,000 insurance product applications (whether life, health or annuity insurance products) submitted per annum, of which a minimum of 10,000 should be applications for the purchase of fixed annuities. Additionally, we would recommend requiring each financial institution to be party to a minimum of ten top-tier wholesale insurance distribution contracts.

Definition of Financial Institution: Reserve Requirement

Section VIII(e)(3) of BICE-II would require a financial institution maintain “in an aggregate amount which must be at least 1% of the average annual amount of premium sales of Fixed Annuity Contracts sold by the Financial Institution to Retirement Investors pursuant to this exemption over its prior three fiscal years” either a fiduciary liability insurance coverage or reserves.

As noted on page 16 of the AmeriLife Application, we proposed the following:

“The [financial institution] would maintain the following insurance coverages (and such policies shall not include any exclusion for acts as a fiduciary), underwritten by an insurer rated not less than A (Excellent) in Best’s Financial Strength Rating Guide:

- i.** Errors and omissions coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate;
- ii.** Directors & Officers Liability of at least \$3,000,000 in aggregate;
- iii.** Employment Practices Liability of at least \$1,000,000 per occurrence and \$2,500,000 in the aggregate;
- iv.** Commercial General Liability, as well as Excess Liability of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
- v.** Commercial Crime (such as Employee Theft, Forgery or Alteration, Computer & Funds Transfer Fraud) of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and
- vi.** Technology liability insurance coverage (such as Network and Information Security, Communication and Media, Computer Program & Electronic Data Restoration, Crisis Management, Security Breach Remediation, Computer Fraud, Funds Transfer

Fraud, Extortion, and Business Interruption) of at least \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

“The [financial institution] would maintain minimum fidelity bond coverage in an aggregate amount not less than One Million Dollars (\$1,000,000) with a deductible not greater than One Hundred Thousand Dollars (\$100,000), underwritten by an insurer rated not less than A (Excellent) in Best's Financial Strength Rating Guide.”

We continue to support these standards. We have two concerns with the proposed reserve requirement in the BICE-II. First, the “fiduciary liability insurance” as described in Section VIII(e)(3)(A) does not currently exist. Additionally, the reserve requirement could be exceedingly difficult for companies that are otherwise well insured and capitalized but have credit facilities that require broad security for the lenders.

Finally, we would note that currently *no* intermediary has *any* sales of Fixed Annuity Contracts sold “pursuant to this exemption.” Thus, at least initially as drafted, the reserve requirement would be \$0.00 and then it would be suppressed over the course of the first three years of the exemption’s existence. We do not believe that to be the Department’s intention, and we do not believe that the public would be well served by such a formula. In the event the Department maintains its requirement of “fiduciary liability insurance”, we would recommend a minimum level of coverage of \$10,000,000 no matter how many annuities contracts are sold pursuant to this exemption or PTE 84-24 or the other Best Interest Contract Exemption.

We appreciate the opportunity to comment on the proposed BICE-II. We would welcome the opportunity to discuss these comments or to provide additional information and input as you work to finalize the proposed exemption.

Respectfully submitted,

AMERILIFE GROUP, LLC

By: 

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Title: President and General Counsel