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Office of Regulations and Interpretations
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U.S. Department of Labor
200 Constitution Avenue, N.W.
Room N-5655
Washington, DC 20210

Office of Exemption Determinations
Employee Benefits Security Administration
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Re: *Definition of the Term Fiduciary; Conflict of Interest Rule (RIN 1210-AB32)*
Proposed Amendment to Proposed Partial Revocation of Prohibited Transaction Exemption 84-24 (ZRIN: 1210-ZA25)
Proposed Best Interest Contract Exemption (ZRIN 1210-ZA25)

Ladies and Gentlemen:

I am writing on behalf of Protective Life Insurance Company ("Protective Life"), and its affiliates, Protective Life and Annuity Insurance Company ("PLAIC"), ProEquities, Inc. ("ProEquities"), and First Protective Insurance Group ("First Protective") (collectively "Protective").

Protective Life was founded in 1907 and is headquartered in Birmingham, Alabama. Protective employs approximately 2,400 people with offices in 7 states. Although recently purchased by The Dai-ichi Life Insurance Company, Protective remains a mid-size company serving American families.

PLAIC was organized as an Alabama company in 1978 and provides life insurance and annuity products specifically designed for customers in the state of New York. First Protective was founded in 1983 to serve the needs of independent producers by providing distribution for life insurance, annuities, and other insurance and financial products. At present time, First Protective has approximately 1,700 agents. ProEquities, our affiliated broker-dealer, is a Top 50 Independent Broker Dealer (ranking 20th overall in Investment News 2014 Broker-Dealer Rankings). The firm has 119 full-time employees in Birmingham and approximately 1,500 independent registered representatives serving approximately 400,000 customer accounts. Approximately 54% of ProEquities assets under management are retirement accounts.

One of Protective's primary products is annuities – both fixed and variable. We sell annuities nationwide through financial institutions, national full-service broker-dealers, and independent agents and brokers. As of December 31, 2014, Protective Life and PLAIC had 147,281 active IRA annuities, representing over $10.7 billion in retirement savings. In 2014, Protective Life and PLAIC issued over $825 million in annuities to IRA's, ranking 28th of the 40 companies ranked by LIMRA. The average value of these IRA annuities is approximately $73,000.

So you see why we are concerned about the Department of Labor's (the "Department") proposed amendment to the definition of "fiduciary" and prohibited transaction exemptions (the "Proposal"). These rule changes will have a significant impact on manufacturers and sellers of annuities, and in turn, the people who need annuities as one way to save for retirement and provide a lifelong stream of income when they do retire. Protective, like many other firms in the industry, fully supports the Department's efforts to create a standard to protect the best interest of the customer. We are concerned, however, that the Proposal lacks clarity as to what is required to achieve that standard.

The Department's final rule will be far-reaching and will impact every facet of retirement savings, from the product manufacturer all the way to the retirement investor. It is imperative that the Department revise the Proposal to address unintended consequences. We therefore appreciate the opportunity to offer the following comments.

<u>The Manufacturer of an Insurance Product is Not a Fiduciary</u>

As proposed, the definition of "fiduciary" leaves open to question whether a manufacturer, such as Protective Life or PLAIC, would be subject to the fiduciary standard and would have to be a party to a Best Interest Contract. We do not believe this is what the Department intended. We suggest adding a "Manufacturer's Carve-Out" to the definition of Fiduciary, clarifying that an insurance company or other "manufacturer" of a financial product is not a Fiduciary and does not have to be a party to the BIC simply because it issues products, such as annuities, and under state law must appoint agents who actually deal with the consumer.

For an example of language that could be added to Proposal as the "Manufacturer's Carve-Our," we respectfully refer the Department to the Insured Retirement Institute's Follow-Up Comment Letter submitted on September 24, 2015.

Best Interest Does Not Equal Best Product

Even though the Department has defined "best interest," there is still confusion over what exactly this term means and, more importantly, how a firm or adviser incorporates this standard into its business practice and procedures. The term "best" is inherently subjective and, ultimately, a judgment call. The Department should recognize expressly that a firm or agent that sells a wide range of products need not recommend the "best" product available in the market for a particular customer because reasonable, qualified advisers can disagree on which product is best for a particular customer. Moreover, an adviser can only sell the products for which his or her firm has a selling agreement, and no firm has selling agreements with all issuers of a particular type of product, be it mutual funds or annuities. We suggest that an agent selling annuities should have available to the customer a broad range of products with competitive features and pricing and should recommend only those products that are in the customer's best interest based on the investment objectives, risk tolerance, financial circumstances, and needs of the customer. Finally, what is in a customer's "best interest" should be judged at the time of the recommendation or sale and not in hindsight. Such a framework would seem to address the concerns of the Department but also provide the parameters for a "best interest" standard that are missing in the Proposal.

The Rule Should be Business-Model Neutral

Some insurance companies and producers limit their agents to selling only *their* products, however many that may be. Many others, including Protective, do not have a captive selling force and the majority of agents who sell Protective products also offer other insurance companies' products as well. From a customer's perspective, dealing with an agent representing one company is the same as dealing with an agent representing multiple companies. Furthermore, agents and selling firms should not be incentivized to limit their range of product offerings to only one insurance company in order to avoid complying with the BIC Exemption.

The Best Interest Contract ("BIC") Exemption should be applied equally to all sellers of variable annuities.

Clarify What is Meant by "Reasonable Compensation"

Under the BIC Exemption, the adviser and financial institution must warrant that their compensation is reasonable. Determining the reasonableness of one's own compensation is difficult and precarious, if not impossible. At the very least, the adviser or financial institution should not be obligated to provide a warranty in the contract that the compensation is reasonable. As a contractual provision, this affords no benefit to the investor but forces the service provider and the firm to use their own criterion for reasonableness.

Whether compensation is "reasonable" or not should be determined by the product or service and judged in comparison to the market for similar products and services. In other words, the plan fiduciary or IRA owner should be the barometer for determining whether compensation is reasonable based on their willingness, after receiving appropriate fee disclosures, to purchase the retirement product. We accept that reasonable compensation is a requirement of the BIC Exemption itself but respectfully request that the Department eliminate any contractual warranty requirement. We also note that, as a factual matter, if under the aggregate facts (including the cost of the product) the advice is deemed to be in the best interest of the consumer, it should not matter that someone deemed the compensation unreasonable; the customer would still have a product in his or her best interest. Similarly, as a factual matter, if under the aggregate facts the advice is deemed not to be in the best interest of the consumer, it would not matter whether the compensation was deemed reasonable or not; the customer would not have a product in his or her best interest and would have recourse under the best interest contract.

Leverage Existing Disclosure Requirements in the BIC Exemption

Under the Proposal, the disclosure requirements under the BIC Exemption will overburden advisers and financial institutions and require costly technological upgrades in order to comply with the Exemption. Moreover, the Department's proposed disclosure regime is unlikely to provide useful and meaningful information to retirement investors about the costs and fees associated with the investment products. Instead, investors will likely be overwhelmed with compensation and fee information, the majority of which will be inapplicable to them, and that which is applicable may still require further clarification from the adviser. Disclosures are not new to financial institutions and many, if not all, are currently complying with one or more disclosure regimes set forth in other rules and regulations, such as ERISA, SEC and state insurance laws. Before the Department imposes a new, expensive and time-consuming disclosure regime, firms should be given an opportunity to rely on their existing disclosures to satisfy the BIC Exemption disclosure requirements.

We appreciate this opportunity to provide comment and hope that our input will aid the Department as it continues to work through the Proposal.

Very Truly Yours,

Max Berueffy
Vice President and Senior Associate Counsel