Crump®
Life Insurance Services

August 4, 2017

SUBMITTED ELECTRONICALLY

Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW, Suite 400
Washington, DC 20210
Attention: Brian Shiker

RIN 1210-AB82, Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions

Dear Mr. Shiker:

This is a response to the Department of Labor's (DOL) Request for Information ("RFI") in connection with its re-examination of the final rule defining who is a "fiduciary" of an employee benefit plan or IRA, and associated prohibited transaction exemptions (the "Fiduciary Rule"). We appreciate the opportunity to provide relevant expertise and suggestions to the DOL regarding changes to this set of rules that will protect the best interests of retirement investors by maintaining access to professional advice and a full spectrum of financial products.

Crump Life Insurance Services ("Crump") is an insurance brokerage general agency, and is one of the nation's most prominent independent wholesale distributors of traditional and variable life insurance, long-term care insurance, disability insurance and annuities. Crump is a corporation registered under the laws of the State of Pennsylvania, having its headquarters in New Jersey, and is a wholly-owned subsidiary of BB&T Insurance Holdings, Inc., the fifth largest insurance broker in the United States and the fifth largest in the world.

Crump has over 1,200 employees working across over 20 regional offices across the United States. It provides a comprehensive suite of support and back office services for insurance and financial professionals, as well as independent financial and insurance services organizations. The insurance professionals to whom Crump currently provides services are largely independent contractors or employees of another financial institution with which Crump is contracted to provide "outside brokerage" services, but a relatively small number of them are employees of Crump. Crump has general agency agreements with over 100 insurance carriers, and does the majority of its business with 20 to 30 insurance carriers.

In a given year, approximately 25,000 professionals are expected to sell one or more insurance or annuity contracts manufactured by a third party insurance carrier and distributed through Crump as an insurance intermediary. The majority of annuities sold through Crump are held in qualified plans or IRAs. Most life insurance policies sold through Crump are *not* impacted by the Fiduciary Rule. However, a small percentage of life insurance policies are either held as assets of a qualified plan, or recommended to be funded with plan or IRA distributions for select, relatively high net worth retirement investors who intend to redirect these accounts (after paying income taxes) toward legacy goals.

Professionals selling life insurance contracts are compensated exclusively by commissions that are approved by state regulatory agencies. While some carriers may be developing "no load" annuity products for use by fee-based advisors, these are not widely available for sale at this time, and most annuity sales are also compensated by a commission. For this reason, virtually any time an annuity or life insurance sale falls under the DOL Fiduciary Rule, the professional recommending the sale must qualify for a prohibited transaction exemption in order to be compensated.

The exemption regime scheduled to go into effect on January 1, 2018, is particularly problematic for both the consumers interested in purchasing indexed or variable annuities, and the financial professionals through whom the consumers may make these purchases. As the rule currently stands, beginning on January 1, 2018, indexed and variable annuities will no longer be eligible to use PTE 84-24 to authorize sales. Only the Best Interest Contract Exemption ("BICE") will be available, which requires a contract between a "Financial Institution" and the retirement investor. As "Financial Institution" is currently defined,[1] many independent insurance agents will not qualify as a Financial Institution or as an employee or other associate of such. While insurance companies could, in theory, act as Financial Institutions with respect to recommendations of their products through independent agents, in our considerable experience, most insurance companies are unable or unwilling to do so. Unless altered, this will close a key channel for the sale of indexed annuities,[2] leaving many retirement investors without access to these important retirement income planning products.

Keeping this fundamental conundrum at the forefront, Crump would like to offer the following specific suggestions for improving the Fiduciary Rule to maintain beneficial consumer access to life insurance, annuities, and associated professional advice.

Preserve the Availability of PTE 84-24 for All Annuities

---

[1] BICE Section VIII defines "Financial Institution" as an entity that employs the Adviser or otherwise retains such individual as an independent contractor, agent or registered representative and that is (1) a Registered Investment Advisor, (2) a bank or similar financial institution, (3) an insurance company, or (4) a broker or dealer registered under the Securities Exchange Act of 1934. It also provides a fifth category of entities that have obtained "an individual exemption granted by the Department under ERISA section 408(a) and Code section 4975(c)." Crump applied for such an exemption in November 2017, and about two dozen insurance intermediaries filed similar applications, but the DOL declined to act on any of these applications. Instead, the DOL proposed a new insurance intermediaries class exemption on Jan. 19, 2017 at 82 FR 7336, and Crump submitted comments on various unworkable aspects of that proposal. There have been no indications that the new Administration intends to grant any of these individual exemption applications or finalize the class exemption.

[2] Note that variable annuities must be distributed through a broker-dealer, which *is* defined to be eligible to be a Financial Institution. Advisers selling variable annuities therefore are *not* independent insurance agents for these purposes. However, some broker-dealers are not willing to sign a Best Interest Contract, so there will still be some disruption of variable annuity distribution, just not as severe as for indexed annuities.

For four decades, some version of PTE 84-24 has been the standard means by which fiduciaries to a qualified plan have been able to sell annuities and life insurance to the plan or plan participants. It has been revised by the DOL several times, and as of June 9, 2017, it also incorporates the "best interest" and other "impartial conduct" standards that are the touchstone of the Fiduciary Rule. PTE 84-24 provides for up-front disclosure of commissions and other potential conflicts of interest to the retirement investor and written approval before a purchase may proceed. This exemption in its current form provides robust transparency and consumer protection.

There has been scant justification provided for removing indexed and variable annuities from the purview of PTE 84-24. The DOL has recognized these products are more complex than non-indexed fixed annuities, but the BICE does not require a different level of consumer education or a higher standard of conduct from PTE 84-24. Both require adherence to the impartial conduct standards, and the DOL stated in its regulation delaying the Rule's applicability date that it believes much potential harm to investors "could be avoided through the imposition of fiduciary status and adherence to basic fiduciary norms, particularly including the Impartial Conduct Standards."[3] The main difference with the BICE is the requirement for a Financial Institution to sign a contract (and even then, only for IRA and non-ERISA plan investors). As explained above, indexed annuity sales often do not occur through BICE-eligible Financial Institutions.

The preamble to the Fiduciary Rule notes: "permitting [fixed] annuities to be recommended under the terms of PTE 84-24 will promote access to these annuity contracts which have important lifetime income guarantees." However, many indexed and variable products have similar "important lifetime income guarantees," particularly when certain riders are selected. Variable and indexed annuities with lifetime income riders are often a better choice for retirement investors who are not ready to retire yet, who are seeking to gain a higher rate of return than fixed annuities provide while providing protection against a future market downturn that could occur just as the investors were planning to (or forced to) retire. To make a fully informed decision about trade-offs between different types of annuity contracts, retirement investors need to be able to make side-by-side comparisons. This will be more difficult if the disclosures and exemption documentation differ between fixed, variable, and indexed annuities, and nearly impossible if a retirement investor needs to go to a different financial professional to compare indexed annuities because the agent presenting fixed annuities is not affiliated with a Financial Institution.

In question 17 of the RFI, the DOL asks whether providing an exemption for insurance intermediaries to serve as Financial Institutions under the BICE would facilitate advice for all types of annuities. This *is* an alternative solution, and Crump was one of the insurance intermediaries that applied for an individual exemption last November (which applications have not been acted upon). However, we believe this is not the optimal solution. The BICE is designed primarily for advisers who have an ongoing advisory relationship with retirement investors, as well as maintaining continuity when advisers leave a firm and an investor's accounts are reassigned to a new adviser. Certain BICE requirements, such as maintaining website access to a retirement investor's particular Best Interest Contract copy, are not well suited for transactional sales, or for an entity such as an insurance intermediary that otherwise

[3] 82 Fed. Reg. 16902, 16905 (April 7, 2017).

has no relationship with the retail investor and does not maintain website access to retirement investor accounts. Moreover, insurance producers often contract with more than one insurance intermediary, creating fundamental problems in designing compensation policies and procedures to provide consistent compensation within "neutral categories" of products when the producer might sell certain products through a different insurance intermediary without Crump's knowledge or outside its control.

Question 17 also asks if ongoing availability of PTE 84-24 for all annuities would give these products a competitive advantage vis-à-vis other products covered only by the BICE, such as mutual fund shares. We do not believe a competitive advantage will be gained. The unique features of annuities place different types of annuity products more in "competition" with one another than with entirely different products, such as mutual funds, individual stocks and bonds, and so on. While the BICE does mandate a number of requirements and restrictions that PTE 84-24 does not, the inverse is true as well. For example, PTE 84-24 only permits commissions (and employee benefits), whereas BICE does not prohibit any particular form of compensation. The different disclosures required by PTE 84-24 versus BICE may put annuities at a *dis*advantage vis-à-vis mutual funds, etc., since PTE 84-24 requires the adviser to disclose compensation as a percentage of the premium before any transaction is approved, whereas BICE only requires a *description* of how the adviser is compensated, with precise numbers provided only upon request. Thus compensation is much more "in the face" of the retirement investor under PTE 84-24 than under BICE.

Expand the Scope of the "Grandfathering" Provisions

Question 16 of the RFI asks about whether the existing grandfathering provisions in the BICE are being used to continue to give advice to investors, and whether there are changes to this provision that would enhance its ability to minimize undue disruption and facilitate valuable advice. Crump wishes to highlight a fundamental problem with this grandfathering language: it does not clearly apply to potential fiduciaries who would use PTE 84-24 and not the BICE (including those that are not Financial Institutions under the BICE). Additionally, in regards to insurance and annuity contracts issued prior to the Fiduciary Rule becoming effective, the grandfathering provisions are too narrowly drawn to facilitate ongoing beneficial advice and minimize disruption.

The "grandfathering" language in Section VII of the Best Interest Contract Exemption is oriented toward continuous advisory relationships and ill-fits periodic servicing questions regarding contracts that have been sold transactionally. It exempts compensation that "is received pursuant to an agreement, arrangement or understanding that was entered into prior to the Applicability Date and that has not expired or come up for renewal post-Applicability Date." The application of this "renewal" language is ambiguous with regard to life insurance contracts that require or allow continuing premium payments that could be deemed "renewals." Also under this language, single-premium annuity contracts would appear to never expire or "come up for renewal" so long as the contract has not been surrendered. The requirement that compensation not be received in connection with the "investment of additional amounts in the previously acquired investment vehicle" is also problematic for existing life insurance contracts that require or allow ongoing premium payments. In addition, life insurance policies funded with distributions from plans and IRAs were not systematically tracked prior to the applicability of the Fiduciary Rule. As a result, there is no good way to identify which in-force policies become subject to the rule when new recommendations regarding these policies are made.

We would suggest adding grandfathering language to PTE 84-24 that would grant an exemption for receiving compensation in connection with advice regarding any life insurance or annuity contract issued prior to June 9, 2017, provided the advice complies with the Best Interest and Impartial Conduct standards. This streamlined grandfathering provision would protect the interests of retirement investors in receiving beneficial advice, but would not require new written disclosures regarding past purchases, operating similarly to the rules presently applied under the "transitional BICE." To the extent insurance professionals have a difficult time determining which in-force contracts fall within the Fiduciary Rule's scope, this would encourage them to follow best interest standards as a matter of course when servicing existing contracts, regardless of whether the advice technically falls under the DOL's purview.

Improve Commission Disclosure Language of PTE 84-24

In the interest of facilitating apples-to-apples comparisons among competing financial products, Crump suggests changes to the commission disclosure requirement in PTE 84-24 to better harmonize with the commission disclosures that may be made under the BICE.

The transactional disclosure required on by the BICE (after January 1, 2018, assuming it is not changed) entitles the retirement investor to request:

> specific disclosure of costs, fees, and other compensation including Third Party Payments regarding recommended transactions. The costs, fees, and other compensation may be described in dollar amounts, percentages, formulas, or other means reasonably designed to present materially accurate disclosure of their scope, magnitude, and nature in sufficient detail to permit the Retirement Investor to make an informed judgement about the costs of the transaction and about the significance and severity of the Material Conflicts of Interest.

In other words, the BICE disclosure requirement is very flexible and oriented toward disclosure that is helpful for the retirement investor to make an informed judgment. By contrast, the new PTE 84-24 disclosure is a more rigid formulation without regard to how fairly informative it may be for the retirement investor:

> The Insurance Commission, expressed to the extent feasible as an absolute dollar figure, or otherwise, as a percentage of gross annual premium payments, asset accumulation value, or contract value, for the first year and for each of the succeeding renewal years, that will be paid directly or indirectly by the insurance company to the agent, broker, or consultant in connection with the purchase of the recommended contract, including, if applicable, separate identification of the amount of the Insurance Commission that will be paid to any other person as a gross dealer concession, override, or similar payment.[4]

[4] Until January 1, 2018, the operative commission disclosure requirement under PTE 84-24 is "[t]he sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeeding renewal years, that will be paid by the insurance company to the agent, broker or consultant in

The stated preference for "an absolute dollar figure" is impracticable, as an insurance adviser cannot determine this number at the time of taking an application for a life insurance or annuity policy. A life insurance client may be "rated" in underwriting, resulting in higher premium payments and therefore higher compensation to the adviser that is completely outside the control of the adviser. An absolute dollar figure also cannot be determined for many annuities that pay trail commissions as a percentage of future variable contract value.

We do *not* recommend retaining the commission disclosure language in the currently-operative version of PTE 84-24 either. Until January 1, 2018, the disclosure requirement is "[t]he sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeeding renewal years, that will be paid by the insurance company to the agent, broker or consultant in connection with the purchase of the recommended contract." This language has considerable weakness as well. For universal life insurance, commissions are usually based on "target premium," which often varies from actual premiums paid, and it is impossible to determine what the "gross annual premium" will be in the future for flexible premium products. Single payment annuities do not utilize the concept of "renewal year," though there are usually "trail" commissions paid as a percentage of contract value (not annual premium) so long as the contract remains in force.

While the updated PTE 84-24 does provide for some flexibility in expressing commissions as a percentage of annual premium payments, asset accumulation value or contract value, it is still less flexible than the BICE language, and will tend to disadvantage insurance agents using PTE 84-24 relative to those selling the same products under the BICE. The updated PTE 84-24 particularly inhibits fair comparisons between life insurance and other financial products because of the structure of life insurance payments and commissions.

An illustration may provide clarity. Consider a 60-year-old who wishes to use an "excess" IRA to fund a legacy for grandchildren. However, if the grandchildren inherit an IRA, they will owe income taxes on distributions, and potentially the account will be reduced by federal and/or state estate taxes as well. The retirement investor may prefer to take distributions and pay income taxes on them now, and reinvest the after-tax distributions into a life insurance policy that will pass tax free to the grandchildren.

If this retirement investor kept his IRA in an advisory account, compensation disclosure would be fairly simple: perhaps 1% of account value per year for advisory services, plus a schedule of fees and charges for various transactions. However, disclosure of the first year commission on a life insurance policy may look shocking in comparison, as total commission paid to both the agent and the employing brokerage general agency may add up to 125%. Please note, the percentage is of *first year premium* (estimated at $25,000 a year to draw down the account over

---

connection with the purchase of the recommended contract." This language has considerable weakness as well. For universal life insurance, commissions are usually based on "target premium," which often varies from actual premiums paid, and it is impossible to determine what "gross annual premium" will be in the future for flexible premium products. For single payment annuities, on the other hand, there is no such thing as a "renewal year," though there are usually "trail" commissions paid as a percentage of *contract value* (not annual premium) so long as the contract remains in force.

life expectancy, resulting in a death benefit of over $1.5 million),[5] not of the entire IRA account value. Total renewal commissions are likely to be on the order of 2%, again of the *premium* paid for the year, not of the account value.

If this retirement investor lives for 25 more years, even if we assume no growth in the account value after fees and taxes, the 1% advisory fees would add up to $250,000. The commissions paid over the next 25 years if the investor bought an insurance policy instead would add up to only $43,250. Furthermore, his heirs would receive more after-tax value from the insurance policy than the IRA. The fact the insurance commissions would be far less than advisory fees in the long run would not be readily apparent to a retirement investor looking at "125% first year commission and 2% renewal" versus "1% annual fee."

If the DOL were to allow commission disclosure to be formatted under PTE 84-24 similar to how the disclosure is formatted under the BICE, the commission disclosure for life insurance and annuity products distributed under PTE 84-24 could be communicated with greater clarity and usefulness to both insurance agents and retirement investors.

In that same vein, we note the new PTE 84-24 in Section II(b) defines failure to disclose a material conflict of interest as a "misleading statement," but the BICE does not. We are concerned inadvertent omissions could give rise to liability under PTE 84-24, again placing this exemption at a disadvantage vis-à-vis BICE. We suggest the treatment of conflict of interest omissions also should be harmonized between the two exemptions.

Expand the Exclusion for Communications with Independent Fiduciaries with Financial Expertise

Finally, Crump supports the expansion of the specific exclusion for communications with independent fiduciaries with financial expertise. As an insurance intermediary and wholesaler, this change would be most directly applicable to Crump's operating procedures, and most beneficial to independent insurance agents and their retirement investor clients.

Question 18 of the RFI notes that, under the existing Fiduciary rule,

> a party's communications with an independent fiduciary of a plan or IRA in an arm's length transaction are excepted from the Rule if certain disclosure requirements are met and the party reasonably believes that the independent fiduciary of the plan or IRA is a bank, insurance carrier, or registered broker-dealer or investment adviser, or any other independent fiduciary who manages or controls at least $50 million.

With regard to Crump's institutional clients, which constitute the majority of Crump's sales volume and revenue, Crump is operating under this exception by making a disclosure confirming it is the retail advisers and their supervising financial institution who have fiduciary responsibilities to retirement investors, not the Crump associates providing wholesale support. However, under the language above, Crump cannot operate within this safe harbor when giving

---

[5] Based on an illustration dated 7/19/17 for a hypothetical 60-year-old male, preferred rating, for Nationwide YourLife® No-Lapse Guarantee UL, the death benefit purchased with a $25,000 annual (all pay) scheduled premium would be $1,555,880.

wholesale advice to independent insurance agents. Crump associates therefore must limit their wholesale communications to those that would not be deemed "recommendations" to the insurance agent, or else they could inadvertently create a fiduciary relationship.

Restricting the scope of wholesale support for independent insurance agents runs counter to Crump's value proposition and the best interests of retail investors. Crump is able to provide superior access and insight for selecting products that best fit the needs and goals of retail clients due to the size and breadth of carrier and agent relationships. Our Annuity Solutions Center and our Advanced Markets groups in particular are able to educate and guide insurance agents through complex products and planning strategies, and evaluate and compare product solutions across dozens of competing insurance carriers. Independent insurance agents choose Crump as their brokerage general agency specifically to access this wholesale assistance to help provide the best solutions for their clients. Agents affiliated with Crump's institutional clients are able to continue receiving the same level of wholesale support in transactions covered by the Fiduciary Rule, but now independent agents are being put at a competitive disadvantage due to the narrow scope of this exception. For independent insurance agents, Crump is forced to inhibit "advice" for the specific transactions where the spirit of the Fiduciary Rule would suggest these agents need it most.

To eliminate any competitive disadvantage for independent insurance agents and to better assist them in fulfilling their fiduciary duties to their clients, Crump suggests adding "a financial professional who holds a valid current license to sell the product(s) being discussed" to the list of eligible recipients of non-fiduciary wholesale advice in § 2510.3-21(c)(1)(i). Alternatively, "financial professional" could be replaced with "insurance agent," though that would have a narrower scope of application.

Conclusion

Crump Life Insurance Services is fully supportive of the principle that insurance agents and other financial professionals should make recommendations in the best interests of their clients. By offering broad and deep access and expertise for life insurance and annuity products as an insurance intermediary, we help financial professionals do just that, regardless of whether the Fiduciary Rule applies or not. Our suggestions are intended to minimize disruption and provide consistency among competing financial products and service providers so consumers can continue to receive fair, transparent, and beneficial advice.

Sincerely,

Robert D. Carney
President
Crump Life Insurance Services, Inc.