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February 18, 2017

By Email: e-OED@dol.gov

Office of Exemption Determinations
Employee Benefits Security Administration, (Attention: D-11926)
U.S. Department of Labor
200 Constitution Avenue, NW
Suite 400
Washington, DC 20210

Re: **Proposed Best Interest Contract Exemption for Insurance Intermediaries, ZRIN 1210-ZA26**

Dear Sir or Madam:

Allianz Life Insurance Company of North America ("Allianz Life")[1] appreciates the opportunity to provide comments on the Department of Labor (the "Department") class exemption to allow certain insurance intermediaries to act as Financial Institutions[2], thus permitting them and the insurance agents and insurance companies they contract with to receive compensation in connection with Fixed Annuity Contract transactions (the "Proposal") under the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code of 1986 ("Code").

Allianz Life commends the Department for issuing the Proposal and for recognizing the role and value of insurance intermediaries in the sale of Fixed Annuity Contracts. We partner with and rely on insurance intermediaries and other financial institutions to market and facilitate the purchase of our fixed indexed annuity (FIA) contracts. Nonetheless, we are concerned that many of the conditions in the Proposal will be difficult, if not impossible, to meet by a large majority of our insurance intermediary partners. Additionally, we would like to address the Department's concern about FIA contracts and provide further information and perspective on the safety and value of these products. Following are our specific comments.

1. <u>State law and market forces already limit insurers' ability to change key terms of an FIA contract during the surrender period.</u>

Our FIAs are heavily regulated by each state insurance department where sold. State insurance law imposes requirements relating to annuity product design, administration and the investments that support the insurance guarantees, and permits the insurer to periodically declare renewal rates for the nonguaranteed values. In addition, state insurance law requires that the form of an FIA contract be filed with and approved by the insurance department before it can be made available for sale. The filing requirements can vary by state, but generally provide for the initial, minimum and maximum participation rates and caps for the indexing methods, the range of variability for any charges, and demonstrations of compliance with the Standard Nonforfeiture Law for Individual Deferred Annuities (the "Standard Nonforfeiture Law") adopted by the National Association of Insurance Commissioners

[1] Allianz Life is a life insurance company that offers a portfolio of individual annuities and insurance products. Allianz SE is the parent company of Allianz Life.
[2] Any capitalized terms not defined herein will have the meaning set forth in the Proposal.

(NAIC)[3], among other requirements.

The Standard Nonforfeiture Law establishes a formula to calculate the interest rate used to determine the minimum guaranteed surrender value required on an FIA contract. This formula does not permit insurer discretion, unlike the rates declared for the nonguaranteed, current rates of a fixed indexed annuity contract.[4] The current rates, however, are subject to the initial, minimum and maximum rates included in the FIA contract form filings. Further, state insurance departments require the FIA contract form filings to include detailed demonstrations of compliance with the Standard Nonforfeiture Law.

Allianz Life is troubled by the Department's suggestion of potentially further limiting the class exemption to annuity contracts that do not permit insurers to change key terms during the surrender charge period. We do not share the Department's view that because there are more moving parts with an FIA contract, then the insurer should be restricted from declaring renewal rates for the nonguaranteed values during the surrender charge period. It is important for the Department to recognize that insurers, whether issuing an FIA or other financial products, including even fixed rate annuities, need the flexibility to change nonguaranteed rates to ensure financial stability so they can meet the long-term promises they owe to purchasers of the contracts. If we fail to administer the product features according to the contract provisions or applicable law, state insurance departments could impose administrative penalties on us. We could also face litigation risk with our customers and harm to our reputation.

Moreover, many states have enacted the NAIC's Annuity Disclosure Model Regulation (the "Disclosure Model")[5], which provides the disclosure standards for FIA contracts. These standards require delivery of both a product-specific disclosure document and the Buyer's Guide[6] to the customer in connection with the sale. These disclosures describe both the guaranteed and nonguaranteed elements of the FIA contract and, for the nonguaranteed values, include clear notice that the current, declared rates are subject to change. For Allianz Life, our disclosure requirements are more stringent. We require that a customer receives and acknowledges receipt of these disclosures in all states[7] where we sell FIAs.

2. <u>Requiring an illustration in the sale of an FIA may violate several states' annuity disclosure laws.</u>

The Disclosure Model also includes standards for annuity illustrations. These standards permit, but do not require an illustration in the sale of an FIA contract. They also require that both guaranteed and nonguaranteed index-based values be illustrated. These standards, however, prohibit illustrating any index that has not been in existence for at least ten calendar years.[8] Further the Department's suggestion that retirement investors be provided a chart comparing pure index returns to the index-based interest credited to the FIA contract would violate state annuity disclosure laws. Both the

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[3] NAIC Standard Nonforfeiture Law for Individual Deferred Annuities, MDL-806. The NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight.
[4] Nonguaranteed current rates are typically declared and guaranteed for the following year or longer, according to the fixed indexed annuity contract.
[5] NAIC Annuity Disclosure Model Regulation, MDL 245.
[6] The NAIC's approved Buyer's Guide to Fixed Deferred Annuities, which for fixed indexed annuities, includes an appendix on equity-indexed annuities.
[7] We refer to the disclosure document as the statement of understanding and, in some cases, the preliminary contract summary. The Buyer's Guide is delivered with the contract.
[8] Section 6F(9)(b) of the Disclosure Model.

Disclosure Model and the NAIC's Advertisements of Life Insurance and Annuities Model Regulation[9] (adopted by several states) only permit index returns to be illustrated when they reflect the current caps, spreads and rates declared by the insurance company.[10]

Notwithstanding, Allianz Life fully supports the Proposal's requirement to provide annuity-specific disclosure consistent with the state disclosure laws for FIAs. We believe that the requirements of the state disclosure laws for FIAs are sufficient to protect consumers and foster consumer education. We question, however, the value in the Department requiring these disclosures to be repeated whenever additional premiums are paid. State annuity disclosure laws generally require that these disclosures only be provided in connection with the sale. Moreover, we note that the Department's own disclosures under the Best Interest Contract Exemption are not required with every single advice recommendation.

3. A premium threshold is not an effective measure of an insurance intermediary's compliance and conflict mitigation capability.

The Department puts too much emphasis on sales volume as an indicator of whether an insurance intermediary is capable of minimizing or eliminating an insurance agent's conflicts of interest in choosing between insurance companies and products. It also unnecessarily prevents the vast majority of insurance intermediaries from being able to qualify under the Proposal. A more meaningful indicator of an insurance intermediary's ability to mitigate conflicts is the experience and quality of management operating the insurance intermediary, including the chief compliance officer. We suggest that the Department reconsider the $1.5 billion premium threshold. A disclosure requirement about the insurance intermediary's management required to be made to the Department could allow the Department to better assess whether the insurance intermediary will be able to carry out the compliance responsibilities under the Proposal. This, combined with a reasonable amount of assets set aside to satisfy any excise tax or litigation liability, should be sufficient to address any compliance or conflict mitigation deficiencies.

4. The Proposal should be delayed consistent with any delay of the Department's Fiduciary Duty Rule.

We are aware that the Department has proposed to delay the applicability date of its Fiduciary Duty Rule in response to the President's Executive Memorandum directing the Department to review the Rule and consider whether to repeal or revise it. Because any actions the Department takes regarding the Rule could impact the Proposal, Allianz Life requests that the Department delay the effective date of the Proposal consistent with any delay applicable to the Rule.

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[9] NAIC Advertisements of Life Insurance and Annuities Model Regulation, MDL-570.

[10] Section 6F(8) of the Disclosure Model; Section 5O(2) of the Advertisements of Life Insurance and Annuities Model Regulation.

Allianz Life appreciates the opportunity to provide comments on the Department's Proposal. Should the Department have any questions or desire to discuss our comments further, please contact me at james.nelson@allianzlife.com or (763) 765-7500.

Sincerely,

James E. Nelson

James E. Nelson
Vice President, Deputy General Counsel