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Submitted Electronically to 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: Best Interest Contract Exemption for Insurance Intermediaries
ZRIN 1210-ZA26

To Whom It May Concern:

On behalf of its members, the Insured Retirement Institute (IRI)[1] appreciates the opportunity to provide these comments to the Department of Labor (the "Department") regarding the proposed regulation to provide a Best Interest Contract Exemption for Insurance Intermediaries (the "Proposed Exemption").

IRI understands that, consistent with an executive memorandum issued by President Trump on February 3, 2017, the Department is planning to propose a delay in the applicability dates of the Regulation, the Best Interest Contract Exemption (the "BIC Exemption"), and the amendments to prohibited transaction exemption 84-24 (the "Amended PTE 84-24") issued by the Department on April 8, 2016 (collectively, the "Fiduciary Rule") to provide time for the Department to review questions of law and policy raised by the Fiduciary Rule and take appropriate action to protect retirement savers from its negative consequences.

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[1] IRI is the only national trade association that represents the entire supply chain of the retirement income industry. IRI has more than 500 member companies, including major life insurance companies, broker-dealers, banks, and asset management companies. IRI member companies account for more than 95% of annuity assets in the United States, include the top 10 distributors of annuities ranked by assets under management, and are represented by more than 150,000 financial professionals serving over 22.5 million households in communities across the country.

As such, IRI urges the Department to withdraw the Proposed Exemption pending the outcome of the Department's review of the Fiduciary Rule. However, if the Department chooses not to withdraw the Proposed Exemption, IRI and its members offer the following comments.

Context for IRI's Comments on the Proposed Exemption

The importance of enhancing retirement savings has never been greater, because of the needs and demands that will be prompted by the dramatic increase in the number of retirees over the coming decades. 10,000 Americans will reach retirement age every day through at least 2030, when almost 73 million individuals, or 20 percent of the U.S. population, will be age 65 or older. [2]

IRI believes it is in the best interests of American working men and women to have the freedom to shop the financial marketplace for annuity products and to procure a source of secure retirement income. A 2015 study found that receiving investment advice significantly increases retirement savings.[3] According to the report, among individuals with $100,000 or less in annual income, individuals who receive investment advice save at least 38% more than individuals who do not receive investment advice. For individuals of retirement age (65 and older), the disparity increases: advised individuals have more than doubled the assets of non-advised individuals. 86% of Baby Boomers say they are better prepared for retirement as a result of their adviser's help, validating existing distribution models.[4]

While the Fiduciary Rule was designed in large part to eliminate conflicts of interest, IRI research has found that conflicts of interest are not a significant stumbling block for most retirement savers. In fact, an overwhelming majority of people indicated they are aware of potential conflicts of interest but are nevertheless highly satisfied with their relationship with their adviser and would recommend their adviser to a friend or relative. IRI believes the vast majority of financial professionals already act in the best interest of their clients, and recent IRI research found our view consistent with that of a significant segment of consumers.[5]

For many retirement savers, independent insurance agents are an important source of financial advice and access to annuities and other products that provide financial security in retirement. This is particularly the case with regard to fixed indexed annuities ("FIAs"). In 2015, about 63% of FIAs were sold by independent insurance agents[6] who were not affiliated with a broker-dealer. These independent agents, many of which are small businesses or sole proprietorships, will be unable to satisfy the BIC Exemption and will be forced to exit the fixed-indexed annuity market unless the agents join a broker-dealer or other "Financial Institution" willing to assume the associated fiduciary liability. Those options are not viable for most insurance-only licensed agents who offer FIAs. The

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[2] Insured Retirement Institute. *Fact Book 2016: A Guide to Information, Trends, and Data in the Retirement Income Industry.*

[3] Oliver Wyman, *The Role of Financial Advisors in the US Retirement Market*, 2015.

[4] Insured Retirement Institute. *Boomer Expectations for Retirement 2015*.

[5] Insured Retirement Institute. *January 2014 Survey of Americans aged 51-67*.

[6] Source: LIMRA Individual Annuity Yearbook, 2008-2015.

Proposed Exemption defines the circumstances under which insurance intermediaries that provide various support services for independent agents, such as independent marketing organizations ("IMOs") and field marketing organizations ("FMOs"), may serve as a "Financial Institution." This is purportedly intended to provide an alternate path for independent agents to continue serving their clients. Unfortunately, for the reasons outlined below, IRI believes the Proposed Exemption will fail to effectively address this problem.

The Financial Conditions under the Proposed Exemption Are Overly Restrictive

The Proposed Exemption would only be available to insurance intermediaries that meet certain financial requirements. Unfortunately, these thresholds are set at needlessly high levels, meaning that all but a relative handful of firms would be ineligible for the Proposed Exemption. In particular, the Proposed Exemption would only be available to insurance intermediaries with average fixed and fixed indexed annuity sales of at least $1.5 billion in premiums over the prior three years. Moreover, such firms would have to maintain either liquid assets or fiduciary liability insurance to satisfy potential liability equal to at least one percent (1%) of the average annual amount of sales made under the exemption over the three prior years. For a firm that averages $1.5 billion in premium sales of fixed and fixed indexed annuities under the exemption during the applicable period, this would amount to $15 million. Most firms simply cannot afford to tie up such significant amounts of capital, and it is our understanding that the type of fiduciary liability insurance described in the Proposed Exemption is not currently available, and would be prohibitively expensive if it were. In fact, it is unclear whether any of the few insurance intermediary firms that could theoretically meet the conditions of the Proposed Exemption would actually choose to do so.

Broker-dealer firms and registered investment advisor firms are not subject to such onerous requirements. FINRA does set capitalization and insurance requirements, but such requirements are more modest and FINRA provides workable self-insurance options for large, well-capitalized firms and insured options for less well capitalized firms.

For the reasons described above, IRI believes the Proposed Exemption would not provide a viable way for the vast majority of independent agents to continue serving the retirement investors who depend on them for service and access to important retirement security products.

Insurer's Ability to Change Terms Should Not Impact Eligibility for Proposed Exemption

In the preamble to the Proposed Exemption, the Department observed that many FIA contracts permit the issuing insurance company to change certain terms during the life of the contract, including during the surrender period. As such, the Department requested comment on whether the Proposed Exemption should only be available for FIAs that do not permit such changes and whether they need a separate exemption. The Department asked the same question as well of fixed rate annuities. IRI strongly opposes any such limitation or need for a separate exemption.

It is commonplace for annuities and other insurance products to contain what are known as non-guaranteed elements. Even traditional annuities with annual declared interest rates allow for an annual change in the declared interest rate subject to a guaranteed minimum set forth in the annuity contract. Variable annuities also often contain maximums for certain expenses or fees. In each case, as with fixed indexed annuities, the variable parameters are set forth in the contract, subject to a maximum or minimum per terms of the contract and disclosed prominently to the consumer. Non-guaranteed elements are important features that give insurers necessary flexibility to ensure the financial stability of the insurance company so it may provide coverage over long periods of time which in all cases are subject to limitations so the client is fully protected.

IRI believes it would be a grievous error for the Department to put any restrictions on the ability of insurers to include non-guaranteed elements in their contracts or restrict the sale of such annuities. This would have a widespread adverse impact on the availability of quality annuity products.

<u>The Applicability Date of the Proposed Exemption Provides Inadequate Time to Comply</u>

The Proposed Exemption was released on January 19, 2017, with comments due by February 21, 2017. Even assuming that the Department were to review the comments and issue a Final Regulation within thirty days, insurance intermediary firms would have just 17 days to satisfy the conditions of the Proposed Exemption (except for those conditions that do not apply during the transition period between April 10, 2017 and August 15, 2018) before the Fiduciary Rule takes effect on April 10, 2017. Practically speaking, insurance intermediary firms will find it virtually impossible to meet the applicable requirements by that date, and independent agents will therefore be forced to stop serving their clients. While it may be possible to alleviate this problem by substantially reducing the conditions and requirements that would apply during the transition period, a delay in the applicability date of the Fiduciary Rule and withdrawal of the Proposed Exemption would be the more appropriate and effective way to avoid this harmful disruption.

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Thank you in advance for considering these comments. If you have any questions or if we can be of assistance, please feel free to contact me or Lee Covington, IRI's Senior Vice President and General Counsel (202-469-3002, lcovington@irionline.org)

Sincerely,

Catherine J. Weatherford
President & CEO
Insured Retirement Institute