

CLIENT MEMORANDUM

DOL Issues Proposed Best Interest Contract Exemption for Insurance Intermediaries

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On January 19, 2017, the Department of Labor released the Proposed Best Interest Contract Exemption for Insurance Intermediaries, which is a continuation of its release of regulations, exemptions and amended exemptions in connection with the definition of “fiduciary” for purposes of employee benefit plans under ERISA and certain plans under Section 4975 of the Internal Revenue Code, such as IRAs. On April 8, 2016, the DOL released its final regulation defining “fiduciary,” Prohibited Transaction Class Exemption 2016-01 (the Best Interest Contract Exemption), Prohibited Transaction Class Exemption 2016-02 (the Principal Transactions Exemption), as well as certain amendments to other existing class exemptions.

The newly issued [proposed](#) class exemption for insurance intermediaries would provide relief that is similar to that of PTE 2016-01, for insurance intermediaries that commit to act as “Financial Institutions.” The proposed exemption is necessary for those intermediaries that would not otherwise satisfy the definition of “Financial Institution” under PTE 2016-01, which is defined to include banks, registered investment advisors registered under the Investment Advisors Act of 1940 or state law, broker-dealers and insurance companies.

Insurance intermediaries typically recruit, train and support independent insurance agents and market and distribute insurance products such as traditional fixed rate annuities and fixed indexed annuities. The intermediaries typically include organizations commonly referred to as independent marketing organizations (IMOs), field marketing organizations

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(FMOs) and brokerage general agencies (BGAs). By permitting insurance intermediaries to serve as Financial Institutions, the proposed exemption facilitates their continued sale of fixed annuities under a single set of policies and procedures.

Under the proposed exemption, a Financial Institution is required to acknowledge fiduciary status for itself and its individual fiduciary adviser. Additionally, the Financial Institutions and fiduciary advisers are required to adhere to basic standards of impartial conduct, provide prudent advice in the “best interest” of the customer, avoid misleading statements, and receive no more than reasonable compensation. Financial Institutions are also required to adopt policies and procedures reasonably designed to mitigate any harmful impact of conflicts of interest, and to disclose basic information about their conflicts of interest, the recommended fixed annuity contract and the cost of their advice. Similar to PTE 2016-01, the proposed exemption is designed to align the fiduciary adviser’s interests with those of the plan or IRA customer, while allowing the fiduciary adviser and Financial Institution some flexibility and discretion in their determination of how to best satisfy the exemption’s standards. For a summary of the final fiduciary rule, PTE 2016-01 and PTE 2016-02, please see our Client Memorandum dated May 6, 2016, available [here](#).

If you have any questions regarding this memorandum, please contact Peter E. Haller (212-728-8271, phaller@willkie.com) or the Willkie attorney with whom you regularly work.

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