DOL Hints at Regulatory 'Relief' for Indexed Annuities

By Kerry Pechter *Thu, Apr 6, 2017*

'Allowing all annuity products to be covered by PTE 84-24 [until the end of the year]... could be a signal in terms of where a revision to the rule could be heading,' said consultant Steven Saltzman after reading the DOL's April 3 letter.

When the Obama Department of Labor's fiduciary rule, with little warning, decided last year that agents who sold indexed annuities couldn't take commissions from insurers without signing the legally-binding "Best Interest" pledge to their clients, the $60 billion a year indexed industry went into fibrillation.

But the Trump DOL's April 3 **letter** on the rule not only delayed its effect until at least the end of 2017, but also hinted that the DOL will reverse itself and allow complex indexed annuities and variable annuities to be sold on commission under so-called Prohibited Transaction Exemption 84-24, or PTE 84-24, which is the same light oversight applied to plain-vanilla fixed deferred annuities and single-premium immediate annuities.

"While it is not yet clear if the shift in allowing all annuity products to be covered by PTE 84-24 is more than a transitional tactic that will revert to the original plan next year," wrote industry consultant Steven Saltzman in a client letter this week, "it could be a signal in terms of where a revision to the rule could be heading. At minimum, firms should consider outcomes related to the prospect of eventual use of PTE 84-24 for all annuities."

Saltzman pointed page 55 of this week's DOL letter:

"From June 9, 2017, until January 1, 2018, insurance agents, insurance brokers, pension consultants and insurance companies will be able to continue to rely on PTE 84-24, as previously written, for the recommendation and sale of fixed indexed, variable, and other annuity contracts to plans and IRAs," it said.

"Some parties have expressed a preference to continue to rely on PTE 84-24, as amended in 2006, which has historically been available to the insurance industry for all types of annuity products," the letter continued. "The Department notes that it is considering, but has not yet finalized, additional exemptive relief that is relevant to the insurance industry in determining its approach to complying with the Fiduciary Rule."

If such "additional relief" is forthcoming, it could resolve the index annuity industry's recent troubles. After peaking at more than $15 billion in the second quarter of 2016, sales faded somewhat in the second half of the year on fears that the fiduciary rule would discourage sales on commission. Rich commissions for insurance agents—along with a persuasive "downside-protection-with-upside-potential" marketing story—have driven the indexed annuity sales since its inception more than 15 years ago.

Lobbying almost certainly helped. There has been strenuous pleading by the National Association of Fixed Annuities and other insurance trade groups over the past year on behalf of indexed annuities, with "fly-ins" to Capitol Hill to visit legislators. Ironically, the same career DOL lawyer who wrote the Obama-era fiduciary rule, Tim Hauser, penned the latest letter.

"We are members of NAFA," said Michael Tripses, CEO of CreativeOne, an insurance marketing organization whose agents sell indexed annuities. "Yes, we are tirelessly advocating and supporting legal costs. [We] will be lobbying the Hill in June. Of course others are lobbying as well, the American Council of Life Insurers, the Insured Retirement Institute, the National Association of Insurance Commissioners, et cetera, but NAFA is the one with the most focus on fixed annuities."

More than 50 life insurance companies issue indexed annuities. Perennially, the largest seller has been Allianz Life, with a market share of 14.3% at the end of 2016. Its Allianz 222 product was the top selling indexed annuity for the tenth consecutive quarter in the fourth quarter of last year. The next four largest sellers included Athene USA, American Equity Companies, Great American Insurance Group, and AIG.

At least three insurers—Allianz Life, Great American, Lincoln Financial—created no-commission indexed annuity products in the past year. These contracts were designed to be sold by advisors who have stopped selling product on commission in order to avoid signing the fiduciary rule's Best Interest Contract Exemption, and have switched to earning fee income based on a percentage of the value of the assets they manage.

The Best Interest Contract (BIC) Exemption is perhaps the most resented element of the Obama DOL's fiduciary rule. In transactions where clients were using tax-deferred IRA money to buy an annuity or a mutual fund, the agent, broker or advisor couldn't accept a commission from the product's manufacturer without signing this contract.

Some broker-dealers have been willing to sign the BIC, while others have not. The contract was designed to make the commission, and the advisor's conflict of interest between the client and the manufacturer, fully transparent. Most importantly, the contract enabled dissatisfied clients to participate in class action lawsuits against the advisor and his wholesaler or broker-dealer. In the absence of the contract, clients could only take their grievances to arbitration panels.

The April 3 letter and the delay of the fiduciary rule until the end of the year also makes moot, Tripses told *RIJ*, an earlier proposal by the DOL, published in the **Federal Register** last January 19, that would have allowed only the largest insurance marketing organizations (IMOs) to be paid as wholesalers of indexed annuities that were sold by agents receiving third-party commissions.

The DOL thought that only the largest IMOs could take on the legal liability and agent oversight responsibilities of the BIC Exemption. According to the January 19 proposal, the DOL would "require the insurance intermediary to have had annual fixed annuity contract sales averaging at least $1.5 billion in premiums over each of the three prior fiscal years to qualify as a Financial Institution.

"This proposed threshold is intended to identify insurance intermediaries that have the financial stability and operational capacity to implement the anti-conflict policies and procedures required by the exemption."