

BULLETIN: JANUARY 10, 2025



## SENATOR WYDEN RELEASES PPLI DISCUSSION DRAFT

### EXECUTIVE SUMMARY

On December 16, 2024, U.S. Senator Ron Wyden (D-OR), then Chairman of the Senate Committee on Finance, released his anticipated discussion draft containing proposed reforms to the Private Placement Life Insurance (PPLI) and Private Placement Variable Annuities (PPVA) marketplaces, the next step in his nearly two-year investigation into the marketplace. Included in his reforms were changes to the tax treatment of the product, tax treatment of reserves held by life insurance carriers issuing certain PPLI/PPVA contracts, and the creation of a disclosure regime by covered insurance and reinsurance companies with penalties for noncompliance, among other reforms. While a notable step, the discussion draft's release does not materially alter its chances for becoming law in the 119th Congress and under a Trump administration. Those chances remain slim for at least the next four years and likely beyond.

M Financial strongly disagrees with Senator Wyden's proposal and is frustrated at the attempt to radically alter the appropriate tax treatment of life insurance. Taxing life insurance would upend a 100-year-old federal policy and disadvantage all American families using their post-tax dollars to protect their loved ones from risk, regardless of the type or scope.

### Discussion Draft vs. Official Introduction

Wyden released a “discussion draft” – what does that mean? Discussion drafts are written by staff using legislative language and shared with other Congressional offices and stakeholders to foster dialogue around concepts and principles with an eye towards improving the legislation through collaboration. They are draft legislation and do not contain an official bill number and cannot be considered by Congress until formally introduced.

### PROPOSED REFORMS:

The “Protecting Proper Life Insurance from Abuse Act” consists of a series of proposed reforms to the PPLI/PPVA marketplace impacting the product, the issuing carriers/reinsurers, and owners of covered policies.

**Covered Contracts** – Not all PPLI/PPVA contracts would be subject to the proposed reforms. A private placement contract would be considered a covered contract if:

- As a requirement, the life insurance or annuity contract can only be purchased by accredited investors or qualified purchasers, as defined in securities law
- The separate account assets support less than 25 PPLI/PPVA contracts, and
- The value of such a contract is supported by each of the assets in such an account, and
- The proportion of each asset supporting such a contract is the same as the proportion of each other asset supporting such a contract

**Tax Treatment** – Once deemed a covered contract, it is denied the tax treatment of life insurance, its inside buildup is subject to a yearly tax on any gain, and the death benefit is taxed (minus basis and any amount previously taxed). Once a PPLI/PPVA contract is considered a covered contract, it is always a covered contract.

**Carrier Changes** – Issuers or reinsurers of covered contracts will not be permitted to treat premiums and reserves of such contracts as life insurance premiums or reserves and will be taxed accordingly.

**Disclosure Regime + Penalties** – The proposal would impose reporting requirements on issuers and reinsurers within 30 days of issuance or reinsurance of a covered contract. Failure to report would carry a \$1 million penalty, with \$1 million for each 30-day additional delay. Both issuers and reinsurers would be required to disclose the name, address, basis, and gain of all owners of covered contracts.

**Offshore Contracts** – Foreign-issued contracts to U.S. persons are affected as well and reportable under the Foreign Accounts Tax Compliance Act (FATCA). A contract can be a covered contract if it is considered a life insurance or annuity contract under U.S. or local law.

**Effective Date** – The proposal would be effective retroactively to “contracts whether issued before, on, or after” the enactment date. No grandfathering is provided, although it does create a 180-day transition period in which an insured could implement a 1035 exchange to a non-covered contract (including permissible PPLI/PPVA) or have the covered contract canceled or liquidated.

## Practical Impact

Ranking Member Wyden’s proposal crosses many red lines for the insurance profession. It calls for taxing the inside buildup and death benefits of life insurance and divulging the sensitive tax information of insureds. Additionally, retroactive tax policy is generally considered unfair to taxpayers as it penalizes after the fact completely legal behavior at the time of the transaction. Reading between the lines, however, this proposal seems focused on the Separately Managed Account (SMA) market and the potential for investor control violations, especially in offshore insurance contracts rather than the less bespoke comingled Insurance Dedicated Fund (IDF) PPLI. A 180-day transition period could, in a worst-case scenario, allow for insurance companies and insureds to exchange a potential covered contract for a similar PPLI contract with different supporting assets, or potentially even reallocating the supporting funds of an existing SMA structure to avoid becoming a covered contract.

## POLITICAL REALITIES – PPLI UNLIKELY TO BE CONSIDERED:

On January 3, 2025, members of the 119th Congress were officially sworn in, switching the majority in the Senate from Democrat to Republican control. A continued majority in the House of Representatives and the swearing in of President-Elect Trump on January 20 will give Republicans unified control for at least the next two years and control of the White House for the next four.

With the change in control of the Senate, Senator Wyden lost his chairmanship and became the Ranking Member (longest tenured committee member in the minority party), which hands control of the Committee to Chairman Mike Crapo (R-ID). Importantly, it allows him to control the Senate Committee on Finance’s agenda and which pieces of legislation are considered for a vote.

In the current political environment, the prospects of Senator Wyden's PPLI proposal being signed into law are slim to none. In M Financial's conversations with Republican tax writers, they have been almost universally opposed to changing the tax treatment of life insurance products, especially on a retroactive basis. Similarly, many of Senator Wyden's own Democrat colleagues have expressed reservations about his approach to PPLI and its potential implications for all retail products that Americans use to protect their families and businesses. It will be impossible for the Democrats to take unified control of Washington for at least the next four years.

Consequently, Democrats will not be able to open the reconciliation process to pass partisan tax policy. Even if it is eventually passed, consideration of his proposal then would still require a near unanimous agreement in both the House and Senate on the principles outlined by the legislation.

Such a high bar is unlikely to be met, although the desire to change the tax treatment of life insurance is one that M Financial and the entire life insurance profession will always take seriously. Our Member Firm community will advocate with their lawmakers on Capitol Hill to protect the appropriate tax treatment of all life insurance products, including PPLI.

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