

BULLETIN: MARCH 6, 2024



## U.S. SENATE FINANCE CHAIRMAN RON WYDEN RELEASES LONG-AWAITED PPLI REVIEW FINDINGS

A widely anticipated report culminating an 18-month examination of private placement life insurance was released last month. This article summarizes the review's genesis, specific points in the report, and provides a legislative and political analysis.

On Wednesday, February 21, the U.S. Senate Finance Committee led by Chairman Ron Wyden (D-OR) released the results of its 18-month investigation into private placement life insurance (PPLI).

M Financial Group strongly disagrees with the conclusion laid out in the report and will vigorously defend the appropriate tax treatment of life insurance products for all Americans. Private placement life insurance and annuities meet all the legal and tax requirements required of all life insurance products. Member Firms follow both the spirit and letter of the law (including the Investor Control Doctrine) when working with clients, and the product is an effective tool as part of a holistic financial plan for many American families.

### SUMMARY

Back in the late summer of 2022, the committee sent out requests for information from PPLI industry leaders including Pacific Life, John Hancock, Prudential, Lombard, Zurich, Investors Preferred, as well as Winged Keel and the American Council of Life Insurers. The request focused on the number of PPLI policies issued, the death benefits of those contracts, and income and asset information on those policyholders.

### Key Takeaways

- Chair Wyden believes the estimated 3,061 PPLI policy owners receive preferential tax treatment and investment outcomes not available to all owners of insurance.
- Marketing language and slide decks “pitching” PPLI as a tax-efficient investment vehicle for wealthy families were included in the report.
- The Senate Finance Committee is committed to releasing legislation in the near future addressing the report's findings.

The committee aggregated the responses and estimates the domestic PPLI marketplace at 3,061 policies with \$40 billion in death benefit (average death benefit of \$13 million). It estimates the income and net worth of PPLI clients at around \$7 million in income per year and \$100 million+ in assets. Of note, these estimates only include the domestic PPLI marketplace, not offshore PPLI.

The report states that these policies deliver unique benefits to wealthy families not available to the general insurance-owning populace due to their complexity, costs, and access to alternative investments. The report does briefly mention the federal securities law requirement that access to financial products containing alternative investments can be sold only to either accredited investors or qualified purchasers. However, it does not mention the myriad federal and state insurance requirements for purchasing PPLI, including insurable interest limitations on the amount of insurance that can be purchased.

Lastly, the report specifically explores the nexus of the IRS's oversight and enforcement of PPLI policies and the Investor Control Doctrine. It concludes that the IRS is unaware of the ownership of PPLI policies unless uncovered through an audit, and therefore is unable to appropriately provide oversight. The report also concludes that the IRS is unable to appropriately oversee these policies.

In summary, the report concludes that wealthy Americans are exploiting the tax treatment of life insurance primarily for investment purposes and offers as evidence policy sizes and a few carefully selected marketing materials. What is left out of the report is the critical role these insurance policies play in holistic financial planning, the impact of federal securities law in determining access to PPLI policies, and any evidence of the unique tax treatment of PPLI versus any widely available life insurance product. Also omitted is an acknowledgment of the codified restrictions in federal and state law appropriately defining life insurance and preventing the systemic abuse of treating it as an investment vehicle.

## LEGISLATIVE AND POLITICAL ANALYSIS

The report forecasts that Chairman Wyden will release legislation in the near future. While it does not provide any specific recommendations, it does outline a series of principles it will follow.

- Will apply to onshore and offshore PPLI and private placement variable annuities
- Will target the tax treatment of these products, with the desired effect of taxing any gain of the product on a year-over-year basis

- Retroactive: will apply to both existing and future policies
- Will create reporting requirements to the IRS with enforceable penalties for noncompliance

Important context is required for any legislation that might be introduced. First, any duly elected member to the United States Congress has the right to introduce any legislation as they see fit. However, in the 118th Congress so far, over 12,000 bills have been introduced with just 39 enacted into law. Tax legislation, especially partisan tax legislation, has an even higher hill to climb.

Second, there is little to no pathway for Chairman Wyden to pass any PPLI-specific legislation into law in the 118th Congress. Congress is currently debating a bipartisan package centered around expanding the Childcare Tax Credit (CTC), providing a low-income housing credit, and extending a series of business tax credits (R&D, expensing, and amortization). Despite passing the House of Representatives on a 357–70 vote, the bipartisan legislative package is languishing in the Senate and is unlikely to be a viable option for PPLI legislation.

## Billionaire's Income Tax Act

The conclusion of Chair Wyden's PPLI investigation comes on the heels of the release of his proposed Billionaire's Income Tax Act. That legislation would create a novel tax regime for wealthy Americans who meet certain income (\$100 million) and/or asset (\$1 billion) test thresholds over a consecutive three-year period. The legislation would create a mark to market regime for all tradable securities, while simultaneously creating a deferral charge for any non-tradeable assets. PPLI was also targeted, calling for the taxation of death benefits and the treatment of policies as Modified Endowment Contracts. Like the potential forthcoming PPLI legislation, the Billionaire's Income Tax Act is just one of the many pieces of proposed legislation facing widespread opposition among both Democrats and Republicans, making it unlikely to ever become law.

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