

July 21, 2017

The Office of Exemption Determination
Employee Benefits Security Administration
Attention: D-11933
Suite 400
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Ladies & Gentleman:

The Investment Program Association (“IPA”) submits the following comments with respect to Request for Information published by the U.S. Department of Labor (the “Department”) on July 6, 2017. These comments relate only to the first RFI which asks whether the January 1, 2018 applicability date of certain provisions of the Fiduciary Rule (the “Rule”) should be extended beyond the current January 1, 2018 applicability date. The IPA appreciates the opportunity to comment on this important regulatory action.

The IPA was formed in 1985 to provide effective national leadership for the direct investment industry. The IPA supports individual investor access to a variety of asset classes not correlated to the traded markets¹ and which have historically been available primarily to institutional investors. These include publicly registered, non-listed real estate investment trusts (“NL REITs”), publicly registered, non-listed business development companies (“NL BDCs”), and other publicly registered, non-listed direct participation programs (the “Other DPPs”), and collectively with NL REITs and NL BDCs, the “Public Products”). For 30 years the IPA has successfully championed the growth and improvement of such products, which have increased in popularity with financial professionals and investors alike. Public Products are now held in more than 2.8 million investor accounts. Today, Public Products function as a critical component of effectively diversified investment portfolios and serve an essential capital formation function for the U.S. economy. The IPA serves the investment community through advocacy, collaboration, and education regarding these “direct investments”.

The IPA firmly supports the extension of the January 1, 2018 deadline for the reasons set forth below. The IPA further suggests that the deadline be extended in order to allow the industry sufficient time to fully comply with the Rule’s requirements and to allow both the DOL and the SEC to fully understand how the implementation to date has influenced the investment industry. This additional time will allow both DOL and the SEC to more specifically tailor further implementation to meet the realities of the investment industry.

The IPA believes this delay will not harm retirement investors while allowing the industry to adapt to the Rule more effectively. First, the IPA believes that between the portions of the Rule that were effective last month and the rules that the SEC and other regulatory authorities have had in place, the main goals of the Rule have been achieved.² Parties regulated by the Rule, including many IPA member

¹ Asset classes that are not correlated to the traded markets generally do not move in parallel with the traded markets. This results in a type of diversification that assists in reducing the portfolio risk that results from traded market volatility.

² See 82 Fed Reg. 16903, 16905 (April 7, 2017)



organizations, must now comply with the Impartial Conduct Standards that are part of the Best Interest Contract Exemption (BIC). These standards are the heart of the Rule and the BIC and ensure that the regulated entities treat retirement investors in a manner that reflects those investors' best interests without regard to the interest of the investment advisor. The delay of the implementation of the more formalistic portions of the Rule and the BIC would not serve as an impediment to providing these protections to retirement investors.

Second, the DOL should delay the implementation of the remainder of the Rule and the BIC in order to allow renewed coordination with the SEC. As you know, the substantive RFIs (specifically RFI 11) request information from the public regarding the current regulatory scheme provided by the SEC and other agencies. Similarly, the SEC has recently indicated renewed interest in the regulatory framework governing investment advice and has invited comments that address certain aspects of the Rule and the BIC.³ It would behoove both agencies, as well as the industry and investors, if more time were allotted to attempt to reconcile the positions of both agencies, as well as industry, in order to most efficiently protect retirement investors. A piecemeal approach would certainly result in not just significant costs to the regulated entities, but would undoubtedly lead to retirement investor confusion with an ever-shifting landscape.

Third, given the fact that the DOL is undertaking an examination of the Rule, including a continuing analysis of comments it received in response to the March 2, 2017 request for comments responding to the Presidential Memorandum published February 7, 2017 and its forthcoming review of responses to the July 6, 2017 RFIs that are not due until August 5, 2017 a delay makes sense. Since it appears reasonable to expect that the information received as a result of both the March 2 and July 6 requests will change some portion of the current Rule, and since it seems highly unlikely that the DOL will be able to complete the analysis of those comments and issue any resulting guidance before the January 1, 2018 applicability date, the most advantageous course of action for both investors and advisers would be to delay the applicability date until the DOL has had sufficient time to address all requested comments. This would be far preferable to an approach where provisions that become applicable on January 1, 2018 are ultimately revoked in relatively short order, causing both confusion for investors and added compliance costs for the industry (which in turn may lead to additional costs for investors).

IPA does not believe that there is any material risk to delaying the applicability date of the provisions of the BIC scheduled to become applicable on January 1, 2018. This delay would be advantageous to advisers and have no discernible negative effect on retirement investors, who are already protected by the key parts of the Rule. It is hard to envision any real costs to the delay, while the benefits would include a revised policy taking into account new information that has been requested.

We appreciate your consideration of our comment and are willing to answer any questions you may have.

Sincerely,



Anthony Chereso
President & CEO, Investment Program Association

³ See <https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31>

