

February 10, 2017

Brian L. Shiker  
Employee Benefits Law Specialist  
Office of Exemptions Determinations  
Department of Labor  
200 Constitution Ave, NW RM N-5700  
Washington D.C. 20210

**SENT VIA ELECTRONIC MAIL & U.S. MAIL**

Dear Mr. Brian Shiker,

Gradient Insurance Brokerage, Inc. (GIB) has had an opportunity to review the Proposed Exemption for Insurance Intermediaries. We would like to express our appreciation and gratitude for your personalized notification prior to the publication of the proposed rule. After reviewing the proposed rule, and based on the Department of Labor's request for comment, we would like to submit four general questions/comments for your review and public opinion.

**Question/Comment One:**

In drafting the Insurance Intermediaries Exemption, it appears that the Department of Labor was attempting to clarify the new law on Fiduciary responsibility. However, this regulation in several ways appears to make it more confusing. Is the Proposed Exemption for Insurance Intermediaries a new path or a classification within the Best Interest Contract Exemption? Does the new proposed change to the transition relief dates<sup>1</sup> apply to those who elect to take the Insurance Intermediaries Exemption or to all financial institutions who elect to take the Best Interest Contract Exemption? We, along with the other potential Financial Institution we have spoken with, are confused as to the interaction between the transition relief dates of the Insurance Intermediaries Exemption and the Best Interest Contract Exemption. Simply put, do the transition relief dates mirror one another or are they distinctly separate and stand alone? If such distinct separation exists, doesn't that require that the Insurance Intermediaries Exemption and the Best Interest Contract Exemption be treated as separate and unique regulations having no material effect on the governance of the other? Such

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<sup>1</sup> The transition relief dates as established by the Insurance Intermediaries Exemption is proposed as April 10, 2017, through August 15, 2018. In contrast, the transition relief dates as outlined in the Best Interest Contract Exemption run from April 10, 2017, through January 1, 2018.

ambiguity is causing substantial confusion in our industry, and we must request that it be clarified prior to implementation.

**Question/Comment Two:**

The Proposed Insurance Intermediaries Exemption creates a qualification/threshold of overall sales averaging \$1.5 billion annually of Fixed Annuity Contract sales over each of the three prior fiscal years to qualify as a Financial Institution. GIB qualifies under the Exemption proposed; however, we are deeply concerned that the creation of this “sales goal”/required threshold, as outlined by the Department of Labor, has created exactly the type of incentivization model that the Department of Labor has so expressly tried to eliminate through the implementation of the Fiduciary Rule. GIB feels that a sales goal, which is established by the required \$1.5 billion threshold, defeats the overall intent of the proposed regulation and will create additional problems for those striving to achieve the \$1.5 billion mark. Based on the fact that obtaining a designation as a Financial Institution is essential to the continued business operation of most of the Insurance Intermediaries, it is reasonable to conclude that those Insurance Intermediaries that are close, but under the \$1.5 billion dollar qualification mark, will have incentive to use questionable sales practices and methods to meet the \$1.5 billion sales goal as required by the Department of Labor. It is reasonable to expect that a company facing the option of going out of business or participating in potentially questionable sales practices will choose the option that allows them to stay in business. This clearly will have a negative impact on the consumer and result in undesirable practices. While we understand what the Department of Labor is attempting through the creation of minimum thresholds, we believe that the proposed structure and high sales goal would lead to unwanted results. Additionally, it should be discussed whether a merger of two Insurance Intermediaries annual sales would allow those two Insurance Intermediaries to satisfy the threshold. If so, would a new company need to be formed? Are both Insurance Intermediaries considered a Financial Institution? Who is liable and exposed to litigation? As stated in our Question/Comment One, we believe that the amount of ambiguity in this proposed requirement is and will continue to cause substantial confusion in our industry and could result in adverse sales practices being taken.

**Question/Comment Three:**

The Proposed Insurance Intermediaries Exemption requires that those seeking to qualify under the exemption have one percent (1%) of total sales in reserve. GIB will have that amount through reserves and/or commercial insurance coverage as prescribed by the rule. Having said that, we believe that we are unique in relation to most Insurance Intermediaries and that most Insurance Intermediaries will have substantial difficulty and a lack of capacity in finding and obtaining insurance or have liquid cash to satisfy the required reserve amount. Not until very recently (commercial coverages are still evolving to satisfy recent Fiduciary Rule requirements) has fiduciary insurance coverages existed in coverage amounts substantial enough to adequately satisfy the required reserve threshold. GIB is concerned that this qualification standard creates too small of a class and that those qualifying under this exemption are not representative of the strong Insurance Intermediaries within the industry. GIB



is requesting clarification of the Department of Labor's intent to determine that the "best/qualified" Insurance Intermediaries are those with the highest sales volume, capital reserves and to limit the qualifiers to a small group? We believes that the Department of Labor could emphasize processes and procedures over a percentage of total sales to help ensure that the right Insurance Intermediaries qualify for this exemption.

**Question/Comment Four:**

The Proposed Insurance Intermediaries Exemption requires that an institution relying on the exemption post its financial data on its public website. GIB strongly objects to this requirement. GIB is a ***privately*** held Kansas Corporation. We believe that the Department of Labor is fundamentally changing the operating requirements of a privately held Kansas Corporation by implementing this requirement. We would like to know if the Department of Labor believes it is appropriate for a federal agency to mandate the disclosure of a privately held corporation's financial records on a public website? GIB believes that the Department of Labor can get the requested information it seeks at any time from an audit or through a subpoena. Furthermore, we believes that the public is not harmed by institutions keeping corporate financial data off of public websites. In the event of litigation a plaintiff could rightly seek an institution's financial data. Also, the information you ask to be displayed is already reviewed by the SEC for RIA firms and by FINRA for broker-dealers, but is not readily available to the general public. It should be noted that GIB, along with what we would assume to be most of the other applicable Insurance Intermediaries, maintains its financial records for any audits that a State Insurance Commissioner may wish to conduct. GIB would like to recommend that the annual audit requirement of the proposed rule stay but that the requirement to post financial data on a public website be removed from the rule.

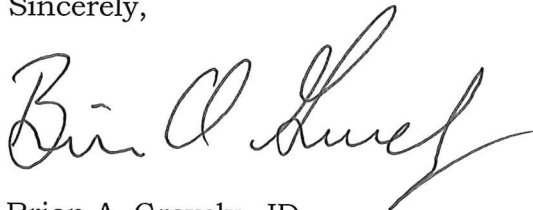
GIB believes that the intent and spirit of the Fiduciary Rule is both positive and good for our industry. We believe that transparency and instilling of trust in the consumer is paramount. However, we believe that taking time to get the regulation right is of utmost priority. President Trump, in his Memorandum on the Fiduciary Rule from February 3, 2017, stated that the Department of Labor is directed to examine the Fiduciary Rule to determine:

- (1) Whether the anticipated applicability of the Fiduciary Duty Rule has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice
- (2) Whether the anticipated applicability of the Fiduciary Duty Rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees; and
- (3) Whether the Fiduciary Duty Rule is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services

The presidential memorandum goes on to say that if the Department of Labor “*makes an affirmative determination...you shall publish for notice and comment a proposed rule rescinding or revising the Rule.*” GIB believes that the current Insurance Intermediaries Exception, the overall Best Interest Contract Exception and the Fiduciary Rule were too hastily drafted. We believe that the questions asked in the presidential memorandum can all be answered in the affirmative. As noted earlier, GIB supports efforts to protect the consumer and reform our financial industry. However, due to the confusion around the implementation of the Fiduciary Rule and the direction advocated by of our current president, ***GIB is recommending that the Department of Labor delay the transition relief period implementation of the Best Interest Contract Exemption and Insurance Intermediaries Exemption for 180 days*** resulting in a transition implementation date of October 10, 2017. GIB also believes that the Department of Labor should reopen for comment and analysis all regulations associated with the Fiduciary Rule (Best Interest Contract Exemption, Insurance Intermediaries Exemption, etc.).

We appreciate the opportunity to share our comments and questions with the Department of Labor and for their open communication throughout the process. We are prepared to explain our positions more fully if the Department of Labor would like to seek further clarification.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian A. Gravely". The signature is fluid and cursive, with a long horizontal stroke at the end.

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