



Submitted by e-mail: EBSA.FiduciaryRuleExamination@dol.gov

September 15, 2017

Office of Exemption Determinations
Employee Benefits Security Administration – Attention D-11933
U.S. Department of Labor
200 Constitution Avenue NW, Suite 400
Washington, DC 20210

RE: RIN 1210-AB82 – Extension of Transition Period and Delay of Applicability Dates; Best Interest Contract Exemption (PTE 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016-020; Prohibited Transaction Exemption 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters (PTE 84-24)

To Whom it May Concern:

Creative One Marketing Corporation (“Creative One”), appreciates the opportunity to comment on the Department of Labor’s (the “Department”) proposed extension (“Extension”) of certain provisions of the Fiduciary Rule and certain prohibited transaction exemptions (“the Rule”). Creative One fully supports the Department’s proposed Extension. Creative one believes that additional time to provide clarity to the Rule will lead to better outcomes for consumers.

Creative One is a national life insurance and annuity brokerage organization, which is commonly known as an independent marketing organization (“IMO”). The past eight months in this industry have been filled with litigation briefings, Presidential Memos, proposed exemptions, comment letters, news articles, Op-Eds, Department delays, requests for information, and another proposed delay —each creating more and more uncertainty about our regulatory landscape. As we’ve steered our path into to compliance with the Rule, we are conscious that changes to the Rule are possible, if not likely.

Creative One strongly believes that the rule should be delayed from the January 1, 2018 applicability date. With the full implementation date 3 months away and with no firm clarity as to the regulatory future of the Rule, IMOs will simply not have the time to meet whatever unknown obligations and standards the Department implements pursuant its current review of the Rule.

The outcome of three legal challenges to the Rule before three different U.S. appellate courts may not conclude until the Spring. A final rule regarding the Insurance Intermediary Exemption remains outstanding and a subject of the Department's review. The Rule itself is still undergoing scrutiny pursuant to the President's memorandum and the Department's Request for Information. The Department under a previous administration gave the industry one-year to adjust their business models to comply with partial portions of the rule and nearly 21 months to comply with the full rule. With changes potentially coming, the Department under this Administration could be giving the industry mere weeks to adjust their business models and comply if the Department does not implement the proposed delay.

I. IMO Development of a compliance regime will take time

The IMO industry, unique to others, needs certainty regarding the duties and obligations under the Rule, because it is likely that IMOs will be forced to modify their entire business models to comply. Whether the Rule goes into effect as currently written or subsequently modified resulting from this review, it will take months to put the pieces in place. Competing institutions like Broker-Dealers and RIAs have had the responsibility to supervise and oversee their financial professionals for many years. As such, they have compliance arms and staff in place to tackle the additional burdens the Rule will impose. IMOs have never been tasked with the supervision or regulatory review of independent agents. The Rule, as written and as contemplated by the proposed Insurance Intermediary Exemption, would thrust those duties onto IMOs—a very large and lengthy undertaking.

The time involved for an insurance intermediary to develop and implement a compliance regime that is compatible with the regulations the Department develops in the coming months will not be quick or easy. If the Department proceeds with the Best Interest Contract Exemption alongside granting insurance intermediaries financial institution status, Creative One and other IMOs will be required to build out “fiduciary best interest review teams.” Pursuant to the rule, these review teams will review each application received by an associated financial professional to satisfy the demands of the Rule and allow the financial institution to sign the BIC with confidence. These teams will be difficult to staff in a timely manner.

Creative One processes over 10,000 annuity applications each year. Based on 262 working days a year, we anticipate that, on average, our fiduciary review team will review approximately 40 applications a day. Each application contains detailed and complex information and oftentimes spans dozens of pages. Our review team will scrutinize each application using the best interest standard considering the potentially dozens or hundreds of annuity products each agent is authorized to sell. Creative One expects, and surely the Department understands, that the review process will take a substantial amount of time per transaction. We anticipate that we will need to hire between 2-6 people, and potentially more, to complete these reviews satisfactorily under the Rule.

However, hiring qualified employees to fill these roles will be difficult and will take time. Creative One and other IMO's will not be hiring to fill these roles until we receive some certainty from the Department regarding the future of the rule. With no final Insurance Intermediary Exemption and the Contract Requirement and the BIC Exemption the subjects of an entire section in the Department's Request for Information, IMO's can't build out compliance regimes and make hires. We don't know what the job descriptions would be, we don't know when the new employees would need to start, and we don't ultimately know if the new employees will be needed. Once the Department definitively releases information regarding the future of the rule and the lawsuits are complete, Creative One and other IMO's can proceed.

However, we believe it could take months to build out these compliance regimes and make the necessary hires to staff the compliance teams. The employment market for an annuity best-interest review position has not been established—it currently does not exist. We are facing many uncertainties regarding these positions including the appropriate education and certification requirements, additional levels of training required, salary levels, and whether there are enough qualified candidates in our local employment marketplace. With any new position, we will have to adapt and adjust depending on the employment market. We are confident we can locate qualified candidates, but it will take additional time. Generally, we have observed that it takes between 90-120 days to hire a securities professional and costs between 25%-30% of the annual salary. With these uncertainties and undefined nature of the marketplace, we anticipate multiple hires for these compliance positions may take even longer.

Beyond the above stated, a clear and final rule is needed for the following to take place: technology companies to develop necessary software to assist the industry with compliance; internal contracting with independent agents governing the relationship in light of the Rule; the development of internal structures including policies and procedures, job descriptions, and internal best practices; internal pricing structures to pass on services that will be performed on the independent agent's behalf; and training agents on new products that debut as a result of the Rule.

If the Department is diligent in its review of the responses to the Request for Information, the earliest the Department could either signal that the Rule will remain in place as currently written or release a finalized revised rule and publish a final insurance intermediary exemption is likely November or December. The items a new rule will require can likely be accomplished in 21 months as given by the Department under the previous administration. But it would be physically impossible for an IMO to accomplish these tasks in 2 months or less.

II. The timing is of the January 1, 2018 implementation date is unfair to IMOs

While not deliberate, the timing of the effective date of the Rule deeply disadvantages IMOs compared to other competing Financial Institutions. The regulatory outlook for broker-dealers, RIAs, and banks has been clear since April 8 of last year. They have had ample time to make necessary adjustments to their business models, contract with their affiliates, and train their employees to ensure full compliance under the Fiduciary Rule. Additionally, their business models previously included supervision of their financial professionals.

IMOs are still dangling in the wind. The Department has not released an IMO exemption and has not completed its review of the Rule pursuant to the February 3 Presidential Memorandum. It will be impossible for IMOs to reach a full level of compliance by January 1, 2018 considering these circumstances. While the Department may claim that it is not picking winners and losers, it is certainly only allowing IMOs to start playing the game with two outs left in the ninth inning. The only equitable solution is to delay the rule to provide much needed stability to the industry and time to comply

III. A delay is absolutely necessary for the IMO industry to function under any new rule

We anticipate that other responses to this portion of the Request for Information will detail the prerogatives of the administration as outlined in the February 3 memorandum, detail the status of the lawsuits, and discuss the necessity to harmonize and coordinate with the SEC and NAIC. We agree that those are all necessary factors to consider in the Department's analysis.

However, we write this response to inform you, on behalf of the IMO industry, that we are running out of time to develop a workable solution by January 1. The Department is not finished adjusting the Rule. We don't know how to comply yet. From a nuts and bolts outlook, asking IMOs to comply with a rule after the Department's review is completed and after an insurance intermediary exemption is promulgated is not achievable by January 1.

What the Department and Creative One can agree on is that the key to good regulation and an effective business environment is predictability and stability. The journey this Rule has taken the past six months has been anything but predictable or stable. To stabilize the process of adopting this rule, we recommend delaying the full implementation of the Rule until July 1, 2019 to comply with any significant new change to the rule like a revision to the BIC or 84-24 exemptions or promulgation of a final insurance intermediary exemption.



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Creative One appreciate the opportunity to share our concerns with the Department. Please do not hesitate to contact me if you would require any additional information

Sincerely,

Andrew Payne
General Counsel