



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

July 21, 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 – Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions Relating to Extending the January 1, 2018 Applicability Date of Certain Provisions**

To Whom it May Concern:

Creative One Marketing Corporation (“Creative One”), appreciates the opportunity to comment on the Department of Labor’s Request for Information regarding the Fiduciary Rule and Prohibited Transaction Exemptions (“the Rule”). Creative One submits the following letter in response to Question 1 of the Department’s Request for Information regarding a delay of the January 1, 2018 applicability date of the Rule. Creative One will submit additional responses to the additional questions included within the Department’s Request for Information.

Creative One is a national life insurance and annuity brokerage organization, which is commonly known as an independent marketing organization (“IMO”). The past six months in this industry have been filled with litigation briefings, Presidential Memos, proposed exemptions, comment letters, news articles, Op-Eds, Department delays, and requests for information —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 5 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



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Intermediary Exemption remains outstanding and a subject of this review. The Rule is the subject of the scrutiny of this review. 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.

## **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 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 IMOs 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



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Intermediary Exemption and the Contract Requirement and the BIC Exemption the subjects of an entire section in this Request for Information, IMOs 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 IMOs can proceed.

However, we believe it could take months 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 get a revised rule finalized and publish a final insurance intermediary exemption is likely October or November. 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.

## **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.



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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 adopting a similar approach to the Department under the previous administration and allow for 12-24 months 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.

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