Independent Insurance Agents & Brokers of America, Inc.
127 S. Peyton St.
Alexandria, VA 22314
20 F Street, NW, Suite 610
Washington, DC 20001

August 3, 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

SUBMITTED VIA www.regulations.gov

Re: Comments on Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (RIN 1210-AB82/ESBA-2017-0004-0001)

To Whom It May Concern:

On April 8, 2016, the Department of Labor (DOL) published in the Federal Register a regulation commonly referred to as the "fiduciary rule." The rule defines who is a ''fiduciary'' when giving investment advice related to employee benefit plans governed by ERISA and certain IRAs. In conjunction with the fiduciary rule in April 2016, the DOL issued certain exemptions to the rule such as the Best Interest Contract (BIC) exemption and the Prohibited Transaction Exemption (PTE) 84-24. On February 3, 2017, President Trump issued an executive order directing the Department to examine the above referenced fiduciary rule. Pursuant to the order, the DOL partially delayed the fiduciary rule and now seeks information on a number of specific issues related to the rule.

On behalf of the Independent Insurance Agents & Brokers of America, Inc. (IIABA)[1], I would like to offer our comments on how IIABA members are reacting to the fiduciary rule since it began to go into effect on June 9. Between July 12 and July 24, IIABA surveyed a sample of its membership to ascertain whether or not the rule had resulted in IIABA members being forced to pull out of markets impacted by the fiduciary rule.

As explained further below, the survey found that a significant portion of respondents had stopped, or planned to stop selling and servicing products impacted by the fiduciary rule on or before Jan. 1, 2018. IIABA survey results indicate that the fiduciary rule is effectively limiting access to professional advice, and is harming small businesses. The survey also found that there are questions regarding the impact of the rule on Health Savings Accounts (HSAs), and other issues such as referrals.

[1] IIABA is the nation's oldest and largest trade association of independent insurance agents and brokers, and we represent a nationwide network of insurance agents, brokers, and employees. IIABA represents independent insurance agents and brokers in all fifty states who offer customers a choice of policies from a variety of insurance companies across all lines of insurance—property, casualty, life, health, employee benefit plans and retirement products. These broad offerings allow IIABA members to assess the financial needs of their customers on a holistic basis.

Based on the survey results and consistent with IIABA's previous comment letters to the DOL on the fiduciary rule, IIABA urges the DOL (1) to consider amending the rule in a way that would encourage not discourage independent insurance agents from selling and servicing products that are impacted by the fiduciary rule, and help Americans' save for retirement; and (2) to exclude HSAs from the rule, or at a minimum provide guidance on how the DOL rule applies to HSAs. Additionally, IIABA has previously submitted comments to the DOL regarding concerns related to referrals and other issues, and the association still has those concerns.[2]

IIABA members are for the most part small and medium sized businesses or "Main Street" advisors. For those IIABA members that sell and service products impacted by the fiduciary rule, annuities are the most common retirement product offered, though some IIABA members also offer non-insurance financial services products such as mutual funds. Many IIABA members work through independent marketing organizations (IMOs) to be able to deliver annuities to consumers.[3] Some IIABA members also work as registered representatives of independent broker-dealers or are dually registered as investment advisors and broker-dealers to provide retirement products and advice to consumers. Finally, some IIABA members help consumers with HSAs as part of their health insurance practice, and are also impacted by the rule in that manner.

IIABA survey results indicate that the fiduciary rule is limiting access to professional advice, harming small businesses, and causing confusion related to HSAs.

As noted above, IIABA surveyed a sample of members electronically between July 12 and July 24. The survey resulted in 821 verifiable responses from IIABA members in 25 states.[4] Furthermore, the survey results and comments received from the sample show that it is appropriately representative of the overall makeup of IIABA's membership.

- 38%, or 315 respondents, answered that they personally and/or the insurance agency they work for had stopped selling or giving advice related to products impacted by the fiduciary rule, or planned to do so on or before January 1, 2018 when the rule takes full effect.

- 42%, or 343 respondents, answered that they personally and/or the insurance agency they worked for would continue to sell and service financial products impacted by the rule.

- 17.5%, or 144 respondents, commented that they personally and/or the insurance agency they work for did not sell and service financial products impacted by the rule.

- 2.5%, or 19 respondents, commented that they were unsure if and how the rule impacted them or their insurance agency.

These results demonstrate that concerns raised by IIABA and others prior to the fiduciary rule going into effect are valid: the rule is resulting in market constriction and limiting access to professional retirement advice as well as options for retirement products. Specifically in respect to independent insurance agents,

[2] For more information see, IIABA Comment Letter on defining who is a "fiduciary" related to the President's February 3, 2017 Executive Order RIN 1210-AB79. (April 17, 2017).

[3] For more information see, IIABA Comment Letter to DOL on the Best Interest Exemption for Insurance Intermediaries RIN 1210-ZA26 (Feb 17, 2017).

[4] Reponses were received from IIABA members in the following states: CT, GA, IA, IL, IN, KS, KY, LA, MA, MD, MI, MN, MO, MS, NC, NE, NJ, OK, OR, SC, TN, VA, WA, and WI.

the survey results indicate that the fiduciary rule is acting to foreclose the ability of consumers to have all their financial and insurance needs assessed in a holistic manner by their trusted "Main Street" advisor.

As part of the survey we also invited members to give any open ended comments, or testimonials, on their experience with the rule that they felt appropriate. We received 288 comments or testimonials. A representative selection of testimonials is attached as "ATTACHMENT A." Of note, 10 survey respondents specifically stated their support for the DOL Fiduciary rule. However, 41 survey respondents specifically stated their opposition to the rule.

The comments and testimonials that IIABA received allowed for the following general conclusions to be drawn:

- The rule is proving too onerous, costly and complicated for small businesses to comply with, resulting in some agencies exiting the market.

- If selling and servicing products impacted by the fiduciary rule is not the main revenue generator for the agency, when considering the increased cost of compliance, litigation risks, and the cost of errors and omissions insurance associated with the rule, some agencies are determining that the risks and costs connected with remaining in the market are too high.

- Some insurance agencies will continue to stay in the market but will be changing the way they do business in a manner that limits access to financial advice (i.e. limiting those within the agency who are permitted to service impacted products, and/or no longer servicing clients with lower account balances).

- There is uncertainty on how the rule impacts HSAs referrals, and fixed annuities showing that at a minimum more guidance is needed from DOL in these areas.

- Some survey respondents noted that as a small business the agency's cost related to obtaining retirement services and advice for their employees had increased.

Independent insurance agencies have been negatively impacted by the fiduciary rule.

The survey results noted above indicate that more than one third of independent insurance agents who responded to the survey will exit the market on or before January 1, 2018; and for those that remain some will offer more limited services to clients. This is a direct result of the fiduciary rule. It is harming independent insurance agencies and small businesses across the country. This exodus of independent insurance agents from the market will limit the ability of consumers to have all their financial and insurance needs assessed by a single insurance agent or agency.

IIABA members have commented that some firms are not allowing independent agents who sell or service retirement plans and who are not licensed with a broker-dealer or registered investment advisor, to receive compensation without changing their business model moving forward. This is not limited to IIABA members though, news reports are beginning to note that among those most affected by the rule are independent insurance agents.[5] This shift will most substantially impact group variable annuity contracts, sold largely to smaller employers for retirement plans that they offer. As such, IIABA urges the DOL to

---

[5] See, "DOL fiduciary rule causing DC-plan keeps to change business with insurance agents," Investment News (Jul. 24, 2017). Available at: http://www.investmentnews.com/article/20170724/FREE/170729972/dol-fiduciary-rule-causing-dc-plan-record-keepers-to-change-business

consider amending the rule to that it encourages independent insurance agents to sell and service products that are impacted by the fiduciary rule, and help American's save for retirement.

HSAs should be excluded from the fiduciary rule, or at a minimum guidance must be provided on how the fiduciary rule applies to HSAs.

IIABA does not support the inclusion of HSAs in the DOL fiduciary rule because HSAs are not intended to be traditional retirement accounts, but are intended as a tool to offset rising medical costs. IIABA urges the DOL to amend the rule to exclude HSAs. High deductible plans paired with HSAs are an increasingly popular option for health insurance coverage. While assets in HSAs can be invested, the majority of HSAs do not contain invested assets beyond cash. HSAs are not intended to be a retirement account that accumulate large balances but instead they are used as specialized tax advantaged checking accounts for health expenses.

According to the Employee Benefit Research Institute (EBRI), which maintains data on HSAs:

- Very few account owners invested their HSA balance in investments other than cash. In 2016 only 4% of HSAs had investments other than cash. [6]

- Annual contributions are small, less than $3,000, and track closely to annual distributions to pay for medical expenses. Overall, 63 percent of account holders withdrew funds. The average annual amount distributed was $1,771 in 2016, implying an average rollover of $1,151. [7]

- Average balances range between $1,027 and $14,873 depending on when the HSA account was open.[8] The average HSA balance is small in comparison to 401(K) accounts, which EBRI cites as having average balances between $25,000 and $250,000 based on the participant's age[9] and IRA accounts which EBRI cites as having an average balance of $92,087.[10]

Should the DOL continue to include HSAs under the rule, at a minimum guidance should be provided to assist health insurance agents and brokers with understanding how the rule applies to HSAs and how to comply with the rule related to HSAs. The survey results indicated that a number of respondents had questions about how the DOL rule would apply to HSAs. Respondent comments indicate that issuing guidance, such as frequently asked questions and examples of when a health insurance agent or broker would and would not be subject to the fiduciary rule if they are selling a high deductible health plan coupled with an HSA would be helpful.

In conclusion, IIABA would like to thank you for the opportunity to express the views of independent insurance agencies on this important issue. While IIABA does not oppose the concept of a "best interest" standard, the association believes that the fiduciary rule's overly broad and complex requirements are limiting consumer access to advice. The market has begun to react, and some IIABA members are being

[6] Employee Benefit Research Institute, Issue Brief No. 434: Trends in Health Savings Account Balances, Contributions, Distributions, and Investments, 2011–2016: Statistics from the EBRI HSA Database (July 11, 2017).
[7] Id.
[8] Id.
[9] Employee Benefit Research Institute, Issue Brief No. 408: 401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2013 (Dec. 2014).
[10] Employee Benefit Research Institute, Issue Brief No. 429: Individual Retirement Account Balances, Contributions, Withdrawals, and Asset Allocation Longitudinal Results 2010–2014: The EBRI IRA Database (Jan. 17, 2017).

forced to pull out of the market completely or no longer service certain clients. IIABA hopes that our comments and recommendations are helpful to the DOL in reviewing the rule and encourages the Department to substantially revise the rule, as noted in this letter and previous letters. Last but not least, the IIABA greatly appreciates the effort that the Department is undertaking to review this rule. Please contact our office at (202) 863-7000 should you wish to have additional information regarding our comments.

Sincerely,

Jennifer M. Webb
Counsel, Federal Government Affairs

ATTACHMENT A

Selected Testimonials from IIABA Member Survey on DOL Fiduciary Rule

(The testimonials have been edited from the originals for typographical errors, formatting, and to remove any personally identifiable information where applicable.)

"I have been in the insurance business for 20 years, primarily selling annuity products (indexed annuities) with no loss in principal. With the DOL fiduciary rule, **this seems like it will be more confusing for clients than anything that may be gained for the client.** I really do not understand what the benefit to the client is going to be."

-IIABA member from Tennessee

"This rule adds burdens of paperwork to those who are already inundated with it and does nothing to actually resolve the problem."

-IIABA member form Illinois

"The rule has affected our agency as a whole. We switched to a new Broker Dealer as a direct result of the DOL rule. It has caused tremendous extra expense to do this. . . . **Now some clients will suffer because they won't get advice.**"

-IIABA member from Iowa

"I have sold a lot [of annuities] over the years. I feel I have helped a lot of people put money away for their future and also help the economy, money invested creates jobs. It would be great if President Trump could eliminate this regulation."

-IIABA member from Michigan

"**The result of the DOL actions is a plethora of small investors who have nowhere to go for advice**. The large investment firms won't talk to them, small firms can no longer talk to them and advice online runs the gambit from decent to deplorable."

-IIABA member from Maryland

"We sell primarily P&C products, but **we will stop selling Annuity products as our cost to comply exceeds our revenue earned.** Regulations continue to impact our agency, thus limiting our ability to sustain and or grow our main street business."

-IIABA member from Illinois

"This law requires our SIMPLE IRA, thru Edward Jones, to go fee based rather than commissions. The result is higher costs to the employer and the employee."

-IIABA member from Tennessee

“It has gotten so complicated and regulated it is almost impossible to properly serve clients.”

-IIABA member from Iowa

“We will take additional measures by limiting the number of agents that can write the products impacted by the DOL rule.”

-IIABA member from North Carolina

“This regulation is becoming too much for small agencies to deal with.”

-IIABA member from Georgia

“The DOL Fiduciary Rule impacted products have historically been a small part of our overall revenue. That being said we still offered them to our customers, but with the changes. . .we aren’t willing to take that chance. As a result our production of these products has dwindled to next to nothing and will cease completely by year end.”

-IIABA member from Indiana

“We are complying with the rule, however it has changed the way we do business and we are contemplating more changes such as setting minimum account sizes and restricting who we do business with. **The fiduciary standard carries too much potential liability to chance working with all clients, especially the smaller ones.**”

-IIABA member from Missouri

“We may stop working with people who have less than $50,000 to invest.”

-IIABA member from Virginia

“We have account executives still giving advice [under the fiduciary rule], however the number of account executives doing this has or will decline.”

-IIABA member from Iowa

“We sell HSA qualified plans. These are the fastest growing plan designs in the country and HSA accounts are a necessary component. **The HSA account is not intended to be a retirement tool, it is a Health Savings Account. It should not be subject to Retirement plan rules and regulations**.”

-IIABA member from Minnesota

“The fees and education costs [related to my Series-6 license] were about $800 a year which allowed for a modest return [to my agency]. As a result of the DOL ruling, my Broker Dealer decided these arrangements were no longer beneficial and my costs increased to $5,000 a year. **I was forced to turn in my Series 6-license**.”

-IIABA member from Maryland