



Submitted by e-mail: [EBSA.FiduciaryRuleExamination@dol.gov](mailto:EBSA.FiduciaryRuleExamination@dol.gov)

March 17, 2017

Office of Regulations and Interpretations  
Employee Benefits Security Administration – Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210  
Attention: Fiduciary Rule Examination

RE: RIN 1210-AB79 – Extension of Applicability Date of the Fiduciary Duty Rule

Dear Acting Secretary Hugler:

I am the general counsel of Creative One Marketing Corporation (“CreativeOne”), a national life insurance and annuity brokerage organization, which is commonly known as an independent marketing organization (“IMO”). I write this comment on behalf of CreativeOne in support of the Department of Labor’s proposal to extend, by 60 days, the April 10, 2017 applicability date of the Fiduciary Rule (“the Rule”) to comply with the Presidential Memorandum on the Fiduciary Rule, 82 Fed. Reg. 9, 675 (Feb. 3, 2017). The Presidential Memorandum proposes important and critical questions that were not analyzed under the previous administration. These questions must be answered before the rule can go forward. Failure to do so would put consumers and thousands of jobs at risk.

**A delay is needed to conduct the missing analysis of the economic impact to the independent distribution model**

The Department of Labor, under the previous, administration did not conduct a thorough analysis of the economic impact of the Rule. In fact, if not delayed, the rule as currently stands will put investors and the industry at risk. The previous administration’s economic analysis and study of the rule did not contemplate the IMO distribution model

Without a delay, it is expected that between 20,000 to 50,000 independent agents with exit the annuity marketplace on April 10, 2017. Separately, as part of the IMO industry, we estimate that as many as 25,000 employees will lose their jobs as a result of the Rule’s unintended impact on small business and individuals. The previous administration did not conduct a thorough analysis on an essential element to the United States economy: jobs. This rule is a job killer and the previous administration did not conduct the necessary analysis to ascertain this clear fact.

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Aside from estimates, we have already directly seen the costs and how this rule has impacted the industry since during the past year. It does not comport with the assumptions the Department of Labor relied on in developing the rule. At the carrier level, we have already seen commission rates drop among some carriers 1-2% in preparation of the annuity market taking a downturn and higher cost of operations and cost associated with compliance with the Rule. This small number has a large impact across the industry. A cut in commission rates at this level could impact an independent agent's income by as much as 25% per year, putting independent agents on the ropes and trying to decide whether to shut down their business, undergo layoffs, or keep going in through this regulatory landscape.

We have also begun to see carriers discontinuing significant annuity products in anticipation of the applicability of the Fiduciary Rule, further limiting consumer choice of different annuities. Carriers will reduce the number of products in order to avoid what could appear to be conflicts within their own portfolios and conflicts on an IMO shelf versus other companies' products. There will be an irresistible urge to standardize and incentive to collude among carriers. Even these results will not resolve an intractable problem of significant commission differences leading to class action lawyer led allegations of conflicted advice. To give just one example, most producers pay lower commissions at upper ages due to actuarial mortality effects and the annuity guarantees. However, the ages at which these breaks occur vary widely due to carrier risk acceptance and actuarial approaches yielding multiple percentage points of commission difference. Even if that could be surmounted by every company miraculously pricing the same, the result would not be positive for a competitive market for consumers. Other examples are by state approval differences, rider differences, and renewal differences.

Consumers and small businesses will also be squeezed out of the market. Assuming some workable IMO Exemption were granted, as the cost of compliance increases, it will cost the IMO, as the supervising "financial institution", a fixed cost to maintain and support each and every independent agent. For each independent agent, the IMO will have to maintain the requisite amount of insurance and create compliance and supervisory capability to cover each agent and their sales. It has become clear that IMOs will not be able to support all of their agents with such increased and new role of supervisor. Many lower producing independent agents will be squeezed out of the market as their IMO will not be able to support their administrative costs. An agent with small production at one IMO, but more significant production at another IMO may be rejected by the former. This will result in single IMO agents, making independent distribution, less independent—a negative impact on consumers.

And while the DOL may have surmised that insurance carriers would serve as a supervising "financial institution" under the BICE, as of the date of this filing, no carrier has publicly announced it will sign a best interest contract with consumers. We are not surprised, since independent agents sell for multiple carriers and do not operate as gate-keeper supervisors like a broker-dealer. Fixed annuity carriers operate more like a variable annuity or mutual fund company- they manufacture financial products but do not serve as employer or supervisor. As a result, these independent agents will have nowhere to go and will be forced to end their business. With such a drastic decrease in revenue and increase in compliance costs for independent agents,

we estimate as many as 60-70% could exit the insurance marketplace as a whole. Many independent agents sell both fixed annuities and other insurance lines, such as life insurance, P&C, long term care, and disability insurance. It is completely impractical for independent agents to simply change their business model and client service proposition to sell other insurance lines. Most CreativeOne independent agents focus on selling fixed annuities and operate their small business to specialize in such retirement products for consumers. Eliminating access to fixed indexed annuities for tens of thousands of independent agents will result in agents losing their small business livelihood and their customers losing their trusted insurance salesperson.

The consumer will also face significant harm. As noted above, a consumer's local "mom-and-pop" insurance agent could possibly go out of business. The consumer could try to find another authorized insurance producer licensed and appointed to support their annuity, but this is highly unlikely. Many registered reps of broker-dealers do not have contracts to sell fixed indexed annuities, preferring to sell variable annuities. End even if a registered rep could obtain a license and appointment with the insurance carrier to service an indexed annuity customer, most customers would likely face the firm's minimum investable assets threshold that many broker-dealers impose to work with them—a level that many middle-income Americans won't reach. Registered investment advisors will similarly decline to support these annuity customers because most do not maintain high minimum investable asset thresholds and won't be able to charge a fee on the annuity purchased. Most RIA firms charge 1-1.5% for the average annuity customer (\$250,000-\$750,000 net worth), and simply do not want to serve Main Street customers because they make more money working with millionaires. Some RIA and BD firms have stated in their own industry conferences that the fee model does not work for a significant portion of the consumer base who are not millionaires. And a last theoretical BICE-approved "financial institution" are banks, yet to our knowledge no bank has agreed to serve as a "financial institution" for independent agents. Customers might also theoretically seek out a different independent agent properly appointed with their insurance carrier, but finding an authorized agent would prove impossibly cumbersome and expensive for the customer. Further, even if they located an authorized independent agent to service their annuity account, most agents would impose their own minimum investable asset thresholds and decline to serve those customers. The BICE rule and the Proposed Exemption will price out a great majority of middle-income Americans. Good retirement strategies and products will be reserved only for the rich.

The Department must undergo a new and thorough economic analysis that considers these new factors. The analysis conducted by the previous administration overlooked the nuts and bolts of how this sophisticated industry operates in favor of general and unverified conclusions. When as many jobs and significant retirement access is at stake, the Department must do its homework. The Department now has the opportunity to do the analysis necessary to determine the real economic impact of the Rule by delaying its implementation.

**The IMO industry is not ready for implementation due to factors beyond its control—the current implementation period has not provided enough of a timeline for a large industry to adjust**

The Rule requires the IMO industry to completely restructure its business model. This restructuring includes significant capital resources, significant human resources expenditures, and

the modifying thousands of contracts with insurance carriers and agents among other changes. However, a large part of the changes necessary for an IMO to comply with the rule are beyond the control of individual IMOs.

IMOs are currently waiting on the following: the Department of Labor to release a final rule regarding the Insurance Intermediary Prohibited Transaction Exemption; insurance companies to develop suitable insurance products that would comply with the requirements of the Insurance Intermediary final rule; insurance carriers to release information regarding compensation, processes, and product availability; and technology companies to complete the necessary software that the industry is relying on to comply with the best interest standard. IMOs can work overtime and weekends to get themselves ready for compliance on April 10<sup>th</sup>, but industries that are being relied upon for compliance are not ready.

IMOs pathway to complying with the rule has been incredibly unstable and unclear leaving IMOs without a clear method to plan for the future. While IMOs are waiting for third parties to provide information and compliance tools, IMOs are tasked with trying to solve day-to-day business issues surrounding the rule like: Should we hire additional compliance staff? Should we lay off employees to prepare for the predicted downturn in the industry sales and compensation? Should we cut back salaries? Should we remain in business?

A delay is needed not only for the industry a better chance to adjust itself for maximum compliance, but also for the secondary and tertiary industries to develop the products and tools necessary for full compliance.

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On behalf of CreativeOne, we thank the Department for its consideration.

Respectfully submitted,



Andrew Payne  
General Counsel  
Creative One Marketing Corporation