

FEA Regulatory Summary

Who is the FEA?

The Federation of Exchange Accommodators (“FEA”) is the industry association for professional exchange facilitators, also known as Qualified Intermediaries (“QI”). FEA member companies facilitate tax-deferred exchanges of investment and business use properties under IRC §1031 for taxpayers of all sizes, from individuals of modest means to high net worth taxpayers and from small businesses to large entities. To comply with tax rules, QIs hold proceeds from the sale of relinquished assets until they can be reinvested in replacement assets to complete the exchange. FEA members represent a broad spectrum of the industry, ranging from small, privately held businesses to large, publicly traded companies and banks, located in small towns to large cities across the nation.

Regulatory Efforts by the FEA

- Most trade associations make it their mission to oppose regulation. In contrast, the FEA has been a strong supporter of regulation of its industry.
- Regulation that requires prudent funds management standards and other protections for taxpayers is necessary to prevent a recurrence of losses caused by a few QIs that engaged in poor and inappropriate funds management practices, including speculative and illiquid investments of exchange funds.
- **State Law:** The FEA believes that the public and the industry will be better served by federal regulation, with consistent standards covering all taxpayers wherever situated, rather than a patchwork of state-by-state regulation. Nevertheless, in the absence of federal regulation, uniform state laws mandating prudent funds management by QIs may be the most achievable form of regulation. The FEA has been actively involved in passing state legislation to regulate exchange facilitators. The FEA drafted a “model law” which establishes standards for prudent funds management, requiring investment goals of liquidity and preservation of principal, along with other financial safeguards for clients. The states of California, Colorado, Maine, Nevada, Oregon, Virginia and Washington have adopted the “model law” with slight variations. The state of Idaho regulates exchange facilitators under its escrow law.
- **FTC:** In 2007 the FEA petitioned the FTC for regulatory oversight and submitted to it a comprehensive draft regulation. The FTC denied the petition, opining that the burdens of regulation outweighed the need, and that there was no evidence of pervasive fraud throughout the industry.
- **US Treasury:** In 2008, the FEA submitted to Treasury and the IRS a proposed amendment to Treasury Regulation 1.1031(k)-1(g) which would impose reasonable, understandable standards of prudent funds management requiring investment goals of liquidity and preservation of principal. Treasury and IRS have considered, but not yet acted upon this proposal.
- **Bureau of Consumer Financial Protection:** Section 5603 of The Wall Street Reform and Consumer Protection Act (12 U.S.C.A. §5301 et seq establishing the Consumer Financial Protection Bureau (“CFPB”)), mandates a study and proposal of legislation and/or regulations to protect consumers using exchange facilitators. The FEA has offered its assistance to the Director. However, the statutory definition of “consumer” could limit the scope of CFPB authority to only individuals using exchange facilitators “primarily for personal, family or household purposes.” Taxpayers of all sorts, not just individuals, avail themselves of the benefits of IRC §1031, and the investment or business use purpose requirement of §1031 may be deemed to be inconsistent with the “personal, family or household” purpose requirement of the statute. If the CFPB’s authority cannot be deemed or expanded to cover all clients of exchange facilitators, then any CFPB regulations will be an insufficient remedy.

Summary

The FEA seeks a regulatory framework that will permit all taxpayers to enjoy the benefit of §1031 exchanges with the confidence that there are protections in place mandating prudent management of their exchange funds, regardless of where they live or where their assets are located. The most expeditious method of achieving this goal is through passage of uniform state laws.