FYI® Alert
For Your Information®
US

Volume 40 | Issue 47 | April 5, 2017

DOL Delays Fiduciary Rule Until June 9

Following President Trump's direction to re-examine the fiduciary regulation, the DOL has pushed back the rule's looming applicability date by 60 days. Comments on the re-examination are due by April 17, 2017.

Background

After years of debate and controversy, the DOL in 2016 finalized the "fiduciary rule" that expanded the scope of the definition of fiduciary for employer-sponsored plans as well as non-ERISA investment vehicles like IRAs and health savings accounts. The rule was generally scheduled to take effect in April 2017, with certain exemptions effective in 2018. (See our April 22, 2016 *For Your Information*.)

On February 3, 2017, President Trump directed the DOL to re-examine the fiduciary rule – specifically instructing DOL to consider whether the rule hinders access to certain retirement savings offerings and information; adversely affects investors or retirees by disrupting the retirement services industry; and/or is likely to cause an increase in litigation and prices investors and retirees must pay for retirement services. In response, DOL proposed a 60-day delay in the rule's applicability date. It also invited comments – due by April 17, 2017 – on the questions raised in President Trump's February memorandum about the anticipated impact of the rule along with other questions that DOL raises in its proposal. (See our March 1, 2017 *FYI Alert*.)

DOL Implements a 60-Day Delay

Reflecting its concern that a longer delay would be costly to investors, DOL delayed the rule's applicability for 60 days, until June 9, 2017. It also delayed for 60 days the applicability of the "Best Interest Contract" Exemption and the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and Individual Retirement Accounts and delayed the need for certain written disclosures and representations by fiduciaries. That is, fiduciaries must adhere to the Impartial Conduct Standards beginning June 9, but are not required to make specific disclosures and representations of fiduciary compliance in written communications with investors until January 1, 2018.

This delay in applicability allows the DOL time to consider comments on the issues President Trump's February 3, 2017 memorandum directed the agency to re-examine. During the delay period, DOL expects to "perform this examination and to consider possible changes" based on "new evidence or analysis developed pursuant to the examination."

> **Comment.** The 60-day delay gives the DOL less than two months to review and react to comments on the questions raised in the February 3, 2017 memorandum. Given this tight timeframe, it's possible that the DOL will delay the rule's applicability further as the June 9, 2017 date approaches.

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