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# DOL Proposes July 1, 2019 Fiduciary Rule Extension

DOL has proposed an extension of the fiduciary transition period until July 1, 2019. The fiduciary final regulation remains in place, but the extension would delay the written disclosures and fiduciary representations required under the revised prohibited transaction exemptions to extend the phased implementation/transition period until a July 1, 2019 full compliance deadline. DOL has also affirmed that the prohibited transaction arbitration restriction is on the chopping block.

## Background

In April, the DOL delayed by 60 days the applicability date for its "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. (See our *FYI Alert* from April 5, 2017.) It also delayed the written disclosures and fiduciary representations required under the revised prohibited transaction exemptions to create a phased implementation/transition period until the January 1, 2018 full compliance deadline set at that time.

Many stakeholders advocated for an additional extension, hoping that the confirmation of Labor Secretary Alexander Acosta would prompt action on President Trump's February 3, 2017 directive to re-evaluate the effect of the rule and its likely impact on retirement savings efforts. (See our February 6, 2017 *FYI Alert.*) But as we reported in our May 24, 2017 *FYI Alert,* Acosta decided there was "no principled legal basis to change the June 9 date" while DOL re-evaluates the rule. In that light, DOL announced plans for gentle enforcement – but concern remained about the expense of implementing changes for 2018 that may later be modified or eliminated.

Meanwhile, pressure mounted for dialing back the anti-arbitration rules in the Best Interest Contract and Principal Transaction Exemptions in light of court challenges. The anti-arbitration rule was crafted to ensure that investors have the option to bring an action in court rather than being limited to arbitration proceedings.

## Extension Proposed

Despite the urging of advocates of the rule concerned about the ongoing harm to participants from what they see as unjustified investment fees imposed on their accounts, the DOL has proposed an additional 18-month transition period before fiduciaries need to meet the full requirements of the final rule and various prohibited transaction exemptions. DOL reasoned that, without the proposed extension, regulated parties may incur undue expense to comply with conditions or requirements that DOL ultimately decides to revise or repeal. During the transition period, financial institutions and advisers would still have to give prudent advice that is in retirement investors' best interest, charge no more than reasonable compensation, and avoid misleading statements.

The DOL will accept comments on the proposed extension through September 15.

## Arbitration Limitation to be Dropped

In addition to the proposed extension, DOL released Field Assistance Bulletin No. 2017-03 to assure constituents that they intend to eliminate the arbitration limitation in the Best Interest Contract Exemption and Principal Transactions Exemption. During the transition period, plan participants can sue to enforce their rights under ERISA, but fiduciaries can require arbitration for settling claims.

## In Closing

While the years-long saga of the revised fiduciary rule continues, plan sponsors should remain vigilant as to updates on the rule and its application.

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