

U.S. Department of Labor Delays Fiduciary Rule by 60 Days

On April 4, 2017, the Department of Labor (the "DOL") announced a 60-day delay of the applicability date of the new fiduciary regulations and related prohibited transaction exemptions.

As discussed in [our prior client briefing](#), on April 6, 2016, the DOL issued final rules re-defining the meaning of the term "investment advice fiduciary" under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986. On March 1, 2017, the DOL announced a proposal to delay the applicability date of the fiduciary rules and related exemptions, including the "best interest contract exemption" ("BIC Exemption"), by 60 days. The delay proposal came after a February 3, 2017 presidential memorandum directing the DOL to further examine any potential adverse effects of the rule and to prepare an updated economic and legal analysis.

Under the finalized delay, the applicability date of the fiduciary rule and related exemptions will now be June 9, 2017. When originally finalized, exemptions to the fiduciary rules required fiduciaries to comply with a limited set of obligations in order to receive transitional relief between the original applicability date of April 10, 2017 and January 1, 2018. These requirements included, in addition to adhering to impartial conduct standards, documentary acknowledgement of fiduciary status, disclosure of material conflicts of interest and representations regarding compliance with record keeping obligations. As explained in the finalized delay, the DOL will now allow fiduciaries to rely on the BIC Exemption and "principal transactions exemption" simply by adhering to impartial conduct standards during the new transition period between June 9, 2017 and January 1, 2018. Fiduciaries are no longer obligated to meet prior transition period disclosure and representation requirements.

The finalized delay also delays the applicability date of amendments to Prohibited Transaction Exemption 84-24 to January 1, 2018 and the amendments to other previously granted exemptions by 60 days. The DOL has retained the ability to further delay the January 1, 2018 applicability date if it decides to make significant changes to the rule or needs more time to complete the review directed under the presidential memorandum. The DOL will continue to seek comments on the broader implications of the final fiduciary rules and the related exemptions through April 17, 2018.

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