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# Trump Directs Reexamination of the Fiduciary Rule Changes

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President Donald Trump issued a memorandum late last week directing the Department of Labor to reexamine the anticipated changes to the fiduciary rule applying to most retirement plans and individual retirement arrangements. The changes are set to go into effect on April 10, 2017; however, the memorandum directs the Department of Labor to conduct a full review to determine whether to rescind or revise the rule. Initial reports indicated that implementation of the rule was being delayed, but the memorandum ultimately issued by the President did not include a delay. The Department of Labor released a statement following the issuance of the memorandum indicating it would consider its legal options to delay implementation. It is not clear how quickly the Department of Labor may reach a conclusion on a delay of implementation.

The anticipated changes expand the definition of fiduciary under the Employee Retirement Income Security Act of 1974 ("ERISA") and subject more financial advisors to fiduciary standards under ERISA. The new fiduciary rule is aimed at eliminating a potential conflict of interest by subjecting retirement plan advisors to fiduciary standards under ERISA if the advisor receives variable compensation tied to the investments the advisor recommends to the plan. Advisors could avoid harsh penalties under the rule by providing specific disclosure and agreeing to abide by a "best interest" standard of conduct. We are aware that some advisors were preparing to implement significant business model changes to comply with the anticipated rule changes.

## **What this means for employers –**

- Employers/benefits committees should evaluate whether they will require advisors to comply with the requirements of the rule despite the memorandum.
- Employers/benefits committees should reach out to their advisors/consultants and confirm whether they intend to proceed with implementing changes to comply with the rule.
- Employers/benefits committees should continue to monitor developments in this area from a fiduciary risk perspective.

For questions on this, contact a member of Holland & Hart's Benefits Law Group.

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