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No More Delays for the DOL's Fiduciary Rule

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In an opinion piece published in the Wall Street Journal earlier this week, the DOL announced that it will no longer delay implementation of its so-called "fiduciary rule." Compliance is required by June 9, 2017. However, the DOL has left open the possibility of future modification of the fiduciary rule, and indicates that it will be lenient in enforcing the rule through the end of the calendar year.

Background. The fiduciary rule was introduced by the Obama administration as a means of reducing conflicted investment advice given to retirement savers in IRAs and most employer-sponsored retirement plans. The rule expands the definition of "fiduciary" to cover more advisors than under current standards and, as a result, makes certain types of compensation customarily paid to those advisors problematic. This leads to the centerpiece of the fiduciary rule: the "best interest contract exemption" (or "BIC Exemption") that establishes the path advisors must follow in order to lawfully receive that compensation.

The fiduciary rule has had a rocky history – both roundly criticized and heralded. In early February 2017, the Trump White House issued a memorandum directing the DOL to analyze the potential impact of the fiduciary rule and consider rescinding or revising the rule. In response to the White House memorandum, the DOL delayed the applicability date of the fiduciary rule for 60 days – from April 10, 2017 until June 9, 2017. In addition, the DOL established a "phased implementation period" until January 1, 2018. During the phased implementation period, the BIC Exemption will be deemed satisfied if an advisor adheres to "impartial conduct standards," charges no more than reasonable compensation for investment services, and refrains from making misleading statements. The transition notice, disclosure and other requirements of the BIC Exemption will not take effect until January 1, 2018.

The DOL's announcement this week confirms the June 9, 2017 general applicability date for the fiduciary rule, as well as the phased implementation period from June 9, 2017 until January 1, 2018.

Temporary Enforcement Rule. The DOL also issued a bulletin this week announcing that its approach to implementing the fiduciary rule will focus on assisting with compliance, rather than citing violations and imposing penalties. During the phased implementation period, the DOL stated that it will not pursue claims against fiduciaries "who are working diligently and in good faith to comply with the fiduciary rule and exemptions."

What this means for employers –

- Employers should press their retirement plan advisors for a fiduciary compliance strategy by June 9, 2017. The procedures and agreements reached in the coming months may set the standard for future plan operations, even if the fiduciary rule is eventually restricted.
- Retirement plan and IRA sponsors should proceed with good faith efforts to comply with the fiduciary rule by June 9, 2017.
- All parties should watch in the coming months to see if the DOL will revise the fiduciary rule before its full implementation (and enforcement) date of January 1, 2018.

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