

CLIENT MEMORANDUM

DOL Finalizes 60-Day Delay of Fiduciary Rule

April 5, 2017

AUTHOR

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On Tuesday, April 4, the Department of Labor (the DOL) released its [final rule](#) delaying the “applicability date” of the DOL’s fiduciary rule for 60 days from April 10, 2017 to June 9, 2017. The final rule also extends for 60 days the applicability dates of the Best Interest Contract Exemption (BIC Exemption) and other related exemptions that were initially issued or amended in 2016 as part of the DOL’s fiduciary rulemaking initiative. The final rule is expected to be published in the Federal Register on Friday, April 7.

The fiduciary rule defines who is a fiduciary under ERISA and the Internal Revenue Code, including as a result of giving investment advice for a fee to a plan or its participants or beneficiaries. The impartial conduct standards (including providing advice in the retirement investors’ “best interest”) set out in the BIC Exemption and the other previously granted exemptions will also become applicable on June 9, 2017. Compliance with the remaining conditions of these exemptions, including requirements to make specific written disclosures and representations of fiduciary compliance in communications with investors, is not required until January 1, 2018.

The delay was prompted, in part, by President Trump’s February 3 memorandum in which he directed the DOL to examine whether the final fiduciary rule might adversely affect the ability of Americans to gain access to financial advice. The memorandum also requested that the DOL prepare an updated economic and legal analysis concerning the likely impact of the fiduciary rule. See our client memo dated February 6, 2017 for a more detailed summary of the issues to be

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considered by the DOL in connection with the DOL review [here](#). Public comments on the questions and issues raised in the February 3 memorandum are due by April 17, 2017.

Now that the applicability date of the fiduciary rule has been extended for 60-days, the open question will be whether the applicability date will be further extended to give the DOL additional time to consider possible changes to the fiduciary rule and related exemptions. We will keep you apprised of any developments that would impact the applicability date. See our client memo dated May 6, 2016 for a detailed summary of the fiduciary rule and related exemptions [here](#).

If you have any questions regarding this memorandum, please contact Peter E. Haller (212-728-8271, phaller@willkie.com) or the Willkie attorney with whom you regularly work.

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