

## CLIENT MEMORANDUM

# DOL to Propose Delay of Significant Components of Fiduciary Rule

August 11, 2017

## AUTHOR

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On Wednesday, August 9, 2017, amid a case challenging the U.S. Department of Labor's (the "DOL") fiduciary rule (the "Rule"), the DOL submitted a Notice of Administrative Action relating to proposed amendments to the Rule filed with the Office of Management and Budget. The proposed amendments would delay the applicability dates of the Best Interest Contract Exemption, the Principal Transactions Exemption and PTE 84-24 (regarding annuities) and extend the transition period from January 1, 2018 until July 1, 2019.

Although the full applicability of the Rule's exemptions would be delayed, fiduciaries would still need to provide investment advice that satisfies the impartial conduct standards (including providing advice in the retirement investors' "best interest," charging no more than reasonable compensation and not making misleading statements) that became applicable on June 9, 2017. Compliance with the remaining conditions of the Rule's exemptions, including the requirement to make specific written disclosures and representations of fiduciary compliance in communications with investors and implementation of specified policies and procedures, would be delayed, though the length of the delay will not be certain until the proposal is officially published in the *Federal Register*. In addition, the proposal will likely be subject to a notice and comment period so that interested parties may comment on the delay.

A delay in the applicability of the exemption conditions would allow the DOL to further examine the Rule and exemptions, as directed by President Trump in his February 3, 2017 memorandum (as previously summarized [here](#)). While we now

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have a proposal that would further extend the transition period for the suspended portions of the Rule, it remains to be seen whether the extension will lead to a more substantial rollback or even elimination of the Rule. We note that the DOL has issued two sets of FAQs describing the requirements during the transition period (available [here](#) and [here](#)).

We will keep you apprised of any developments regarding the suspended portions of the Rule and new applicability date. See our client memo dated May 6, 2016 for a detailed summary of the fiduciary rule and related exemptions [here](#).

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

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