



DOL Edges Toward Delay on Expanded Fiduciary/Conflict of Interest Rules

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Last year, the Department of Labor (DOL) finalized expansive changes in the definition of a “fiduciary” that applies to both ERISA-governed plans and individual retirement accounts (IRAs). The expanded definition means that a much broader group of institutions and advisors will now be fiduciaries, and therefore will need exemptions from the self-dealing “prohibited transactions” in ERISA and the Internal Revenue Code in order to be paid for their services or securities sales. Exemptions issued with the final regulations included major changes for many advisors and custodians of individual retirement accounts, requiring that they enter into a “Best Interest Contract” with their customers, and make expansive new disclosures about their business structure and compensation policies to help consumers be better informed about the conflicts of interest that industry fee and compensation practices may pose.

The regulations and prohibited transaction exemptions become applicable on April 10, 2017 (the “Applicability Date”). On March 2, 2017, the DOL *proposed* to delay this Applicability Date for 60 days. But, because the April 10 date was in the final regulations, before the DOL can actually delay application of the new rules, there must be a notice and comment period. It may be that a binding, final rule from the DOL will not come until shortly before, or in the worst-case scenario, shortly after April 10. That final rule might delay the rules to give businesses more time to comply, might delay them and signal that the DOL expects to make changes before the new Applicability Date, or might leave the rules intact and not delay their application.

On March 10, 2017, the Department of Labor issued Field Assistance Bulletin No. 2017-01, titled “Temporary Enforcement Policy on Fiduciary Duty Rule” (the “FAB”). The FAB provides temporary relief from enforcement of the DOL’s Fiduciary Rule and the related prohibited transaction exemptions.

Although the DOL states in the FAB that it hopes to issue a final decision on whether to officially delay the rules before April 10, many financial institutions who will be subject to the Fiduciary Rule have expressed concerns about investor confusion and other marketplace disruption based on uncertainty about whether a final rule implementing any delay will be published before April 10. For example, some financial services firms and advisers are considering distributing communications to existing retirement investor clients and potential plan and IRA customers that, among other things, include language regarding an uncertain applicability date and conditional acknowledgements of fiduciary status (i.e., that the firm will be a fiduciary, but only if the rule becomes applicable.)

In recognition of these concerns, the DOL issued a temporary enforcement policy via the FAB. Under this temporary enforcement policy, the DOL will not take enforcement action for non-compliance with the Fiduciary Rule in two cases

For more information regarding the circumstances, view this article in its entirety by [clicking here](#).

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