

The Fiduciary Rule Status Update

September 26, 2017

On April 8, the Department of Labor published the so-called "Fiduciary Rule." It defines who is an employee benefit plan's "fiduciary" for purposes of the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code as a result of giving compensated investment advice regarding assets of a plan or individual retirement account. The Department simultaneously published two new administrative class exemptions from the prohibited transaction provisions of ERISA: the best interest contract exemption, and the class exemption for principal transactions in certain assets between investment advice fiduciaries and employee benefit plans and IRAs. The Fiduciary Rule had an initial applicability date of April 10. However, by memorandum dated February 3, President Trump directed the Department to prepare an updated analysis of the Fiduciary Rule's likely impact on access to retirement information and financial advice. On March 2, the Department proposed a 60-day delay of the applicability date of the Fiduciary Rule and prohibited transaction exemptions, and also sought public comment on their implementation and effect. On April 7, the Department promulgated a final rule extending the applicability date by 60 days — from April 10 to June 9. As such, the Fiduciary Rule took effect June 9 pursuant to a phased implementation period for compliance with the new exemptions. Under the phased implementation, providers need only comply with the impartial conduct standards to avail themselves of the exemptions. To satisfy these standards, providers must follow the best interest standard of care, receive no more than reasonable compensation, and make no materially misleading statements. On August 9, the Department submitted to the Office of Management and Budget proposed amendments to three exemptions, which would extend the transition period and delay applicability dates from January 1, 2018 to July 1, 2019. The Department stated that it will continue to review the Fiduciary Rule and seek public comments on potential changes. Relatedly, on July 6, the Department published a request for information seeking public comment on several aspects of the Fiduciary Rule, including ideas for possible new exemptions or regulatory changes. The deadline for submitting comments closed August 7, although Department officials have publicly indicated they will continue to accept comments beyond that deadline.

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