



April 28, 2017

DOL FIDUCIARY RULE: 60-DAY DELAY

On April 4, 2017, the Department of Labor (“DOL”) released a final rule delaying the general applicability of its rule that revises the definition of “fiduciary” under the Employee Retirement Income Security Act (“ERISA”) and related prohibited transaction exemptions (“PTEs”) by 60 days, to June 9, 2017 (the “Fiduciary Rule”).¹ Applicability of certain more onerous PTE requirements have been delayed to January 1, 2018.

In response to the February 3, 2017 Presidential Memorandum directing the DOL to examine the Fiduciary Rule to determine if it adversely affects the ability of Americans to gain access to financial advice, the DOL published a request for comment on a proposed 60-day extension to its Rule defining who is a fiduciary and related PTEs.² Based on its review of the comments received, the DOL concluded that some delay in full implementation of the Fiduciary Rule and PTEs was necessary for it to conduct a careful review pursuant to directive of the Presidential Memorandum. The DOL stated that such review likely would take more than 60 days, but that it would be inappropriate to broadly delay application of the fiduciary definition for an extended period in disregard of its previous findings of possible ongoing injury to retirement investors.

Accordingly, to implement a more balanced approach, the DOL extended for 60 days to June 9, 2017, the applicability date of all provisions of the Fiduciary Rule. It also extended for 60 days to June 9, 2017, the applicability date of certain PTEs, including the Best Interest Contract Exemption (“BIC Exemption”). Pursuant to the Rule, during the transition period – from June 9, 2017 to January 1, 2018 – fiduciaries engaging in transactions covered by these exemptions will be required to comply with the “Impartial Conduct Standards” and not with the more onerous notification, documentary

¹ The full text of the Fiduciary Rule is available at www.federalregister.gov/documents/2017/04/07/2017-06914/definition-of-the-term-fiduciary-conflict-of-interest-rule-retirement-investment-advice-best.

² See our Client Alert “Presidential Actions Direct Reconsideration of DOL Fiduciary Rule and the Dodd-Frank Act” dated February 23, 2017, available [here](#).

and other requirements of such exemptions. Under the Impartial Conduct Standards, advisers and financial institutions generally are required to provide investment advice that is in the investors' best interest, receive no more than reasonable compensation, and avoid making misleading statements to investors about recommended transactions.

By providing a 60-day extension for applicability of the Fiduciary Rule and not requiring full compliance with the more onerous requirements of other PTEs including BIC until January 1, 2018, the DOL complies with the Presidential Memorandum, protects the interests of retirement investors, and at the same time, retains the ability to make additional changes to the Fiduciary Rule and PTEs. Additional changes could include further extending the January 1, 2018 applicability date or granting additional interim relief, if appropriate.

There remains considerable uncertainty concerning the Fiduciary Rule and related exemptions and further delays may be forthcoming. We continue to monitor the situation.

If you have any questions concerning the applicability of or compliance with the Fiduciary Rule please call Meryl Wiener, any of the underlying or your regular Warshaw Burstein attorney.

Frederick R. Cummings, Jr.	fcummings@wbny.com	212-984-7807
Thomas Filardo	tfilardo@wbny.com	212-984-7806
Marshall N. Lester	mlester@wbny.com	212-984-7849
Marilyn S. Okoshi	mokoshi@wbny.com	212-984-7874
Murray D. Schwartz	mschwartz@wbny.com	212-984-7701
Stephen W. Semian	ssemian@wbny.com	212-984-7764
Kyle A. Taylor	ktaylor@wbny.com	212-984-7797
Meryl E. Wiener	mwiener@wbny.com	212-984-7731
Scott E. Wortman	swortman@wbny.com	212-984-7723