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LEGAL UPDATES

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Department of Labor Fiduciary Rule Delayed

Service

Employee Benefits & Executive Compensation

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The Department of Labor (DOL) has announced that it will delay the applicability date of the fiduciary conflict of interest rule (the Rule) and its related exemptions for 60 days, from April 10, 2017, until June 9, 2017. In addition, the prohibited transaction exemption requirements will be eased between June 9 and January 1, 2018.

Delay of Applicability Date

Unless the applicability date of the Rule is extended further, the new definition of fiduciary will apply on June 9, 2017, and certain financial institutions and advisors (such as those that receive fees that may vary based upon their recommendations) will need to comply with the "impartial conducts standards." This means that such fiduciaries will need to act in the best interest of the investor. Fiduciaries that provide advice to employer-sponsored ERISA plans have always been, and will continue to be, held to this standard.

Previously, fiduciaries could utilize a transition prohibited transaction exemption rule between April 10, 2017, and January 1, 2018. Under the transition rule, the fiduciary had to acknowledge fiduciary status and provide certain disclosures. Alternatively, fiduciaries could have complied with the full "best interest contract exemption." Now, however, the requirements to make specific written disclosures, make representations of fiduciary compliance, and enter into contracts with investors will not apply until January 1, 2018.

What This Means to You

Financial institutions or advisors that were not already considered fiduciaries will not be held to a fiduciary standard until June 9, 2017. Even if a prohibited transaction exemption is needed once the fiduciary standard becomes applicable, financial institutions and their advisers will not be required to provide disclosures or acknowledge fiduciary status in writing, or enter into any specific contracts with investors until January 1, 2018. However, it is certainly possible that changes to the Rule or the exemptions could occur between now and January 1, 2018.

Even though some requirements are delayed, fiduciaries should be prepared to defend their actions and should therefore maintain records of their efforts to provide advice that is in the best interest of investors.

Contact Us

For more information about how the DOL's fiduciary rule may impact your organization, contact Mark Welker, David Eckhardt or another member of Husch Blackwell's Employee Benefits and Executive Compensation team.