DOL PROPOSES 18-MONTH EXTENSION OF FIDUCIARY RULE'S TRANSITION PERIOD

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ERISA Fiduciary Alert

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On August 9, the Department of Labor ("DOL") submitted to the Office of Management and Budget ("OMB") proposed amendments to the Best Interest Contract Exemption and other new and amended prohibited transaction exemptions related to the DOL's rule changing the definition of the term "fiduciary" (the "Fiduciary Rule").[1] The proposed amendments would extend by 18 months the phased implementation period running from the June 9, 2017 applicability date, until full compliance with all of the conditions of the prohibited transaction exemptions comes into effect (the "Transition Period"). The Transition Period is currently scheduled to end on January 1, 2018. Under the proposed amendments, the Transition Period would end on July 1, 2019.

We first learned of the proposed Transition Period extension when DOL referenced it in a notice of administrative action filing in the *Thrivent Fin. for Lutherans v. Acosta* case, a lawsuit challenging the Fiduciary Rule.[2] The name of the proposal confirms that DOL is (at least initially) proposing an 18-month delay. According to the notice, the proposal's title is:

> Extension of Transition Period and Delay of Applicability Dates From **January 1, 2018, to July 1, 2019**; Best Interest Contract Exemption (PTE 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016-02); Prohibited Transaction Exemption 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters (PTE 84-24). (emphasis added)[3]

OMB's receipt of the proposed Transition Period extension was reflected on their website as of Wednesday afternoon, August 9, 2017, and the proposal is listed there as "economically significant."[4] Once OMB's review is complete, the full text of the proposal will be published in the Federal Register. The implementation of a relatively lengthy 18-month delay would give DOL time to assess and revise the Fiduciary Rule and exemptions and the proposal may indicate that DOL is planning more extensive changes.

Notes:

1. Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice, 81 Fed. Reg. 20,945-21,002 (Apr. 8, 2016) (to be codified at 29 C.F.R. pt. 2510.3-21); Best Interest Contract Exemption, 81 Fed. Reg. 21,002-21,089; Amendment to and Partial Revocation of Prohibited Transaction Exemption (PTE) 84-

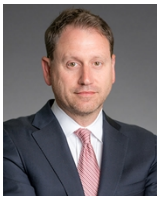
24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters, 81 Fed. Reg. 21,147-21,181 (Apr. 8, 2016).

2. *Thrivent Financial for Lutherans v. Acosta, et al.,* No. 0:16-cv-03289 (D. Minn. Sept. 29, 2016).

3. *Id,* Notice of Administrative Action (August 9, 2017).

4. *See* <https://www.reginfo.gov/public/do/eoDetails?rrid=127484>.

KEY CONTACTS



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