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

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Investment Management Alert

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On Thursday, August 31, 2017, the Department of Labor (DOL) published its proposal[1] to extend the "Transition Period"[2] for the Best Interest Contract (BIC) Exemption[3] and Principal Transaction Exemption[4] from its currently scheduled end date of January 1, 2018 until July 1, 2019. The proposal would also delay the applicability date of certain amendments to Prohibited Transaction Exemption (PTE) 84-24 for the same period. No further changes to the Transition Period were proposed. If the proposal is finalized, fiduciaries relying on the BIC Exemption may continue to comply with the current "Impartial Conduct Standards" (provide prudent advice that is in retirement investors' best interest, charge no more than reasonable compensation, and avoid misleading statements) and avoid adherence with the BIC Exemption's more onerous requirements through at least July 1, 2019.

In proposing the delay, DOL cited its ongoing reexamination of the Fiduciary Rule[5] and related PTEs pursuant to President Trump's memorandum on February 3, 2017, as well as its desire to look for alternatives to the requirements in those exemptions. DOL stated that in the near future it might propose a new and more streamlined class exemption based on recent innovations in the financial services industry, such as the creation of "clean shares."[6]

DOL is also seeking comment on whether other approaches to the delay would be more appropriate, in particular, the relative benefits or harms of three possible approaches: (1) a "time-certain" delay, such as the currently proposed 18 months, (2) a delay that ends at a specific time period after the occurrence of a defined event (such as the conclusion of DOL's presidentially mandated review); or (3) a tiered approach that extends the Transition Period until the earlier or later of (a) a date certain or (b) the end of a period following the occurrence of a defined event.

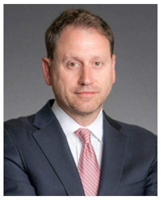
Comments are due by September 15, 2017.

NOTES:

[1] 82 Fed. Reg. 41365 (August 31, 2017)
[2] For more information regarding delays of the Transition Period, please refer to our prior client alerts, "DOL Proposes 18-Month Extension of Fiduciary Rule's Transition Period", http://www.klgates.com/dol-proposes-18-month-extension-of-fiduciary-rules-transition-period-08-10-2017/, and "Fiduciary Rule Delayed - Important Compliance Takeaways", .

[3] "Best Interest Contract Exemption," 81 Fed. Reg. 21002 (April 8, 2016)
[4] "Adoption of Class Exemption," 81 Fed. Reg. 21089 (April 8, 2016)
[5] "Definition of the Term "Fiduciary"; Conflict of Interest Rule - Retirement Investment," 81 Fed. Reg. 20946 (Apr. 8, 2016)
[6] For more information regarding clean shares, please refer to our prior client alert, "SEC Staff Addresses Mutual Fund Fee Structures in Response to DOL's Fiduciary Rule", .

KEY CONTACTS



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