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DOL Finalizes 18-Month Extension of Fiduciary Rule Transition Period

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The Department of Labor (DOL) finalized the Fiduciary Rule's transition period extension from January 1, 2018 to July 1, 2019, as it had previously announced in August. (See our prior blog posts here and here). The DOL reported that it has not yet completed the reexamination of the Fiduciary Rule and its economic impacts as directed by the President on February 3, 2017, and would not be able to complete this in time to make any necessary changes by January 1, 2018, when the transition period was previously set to end.

Transition Period Standards of Conduct. During the Fiduciary Rule's transition period, financial institutions and advisers providing fiduciary investment advice to IRAs or ERISA-covered plans (including 401(k), profit sharing and pension plans) must comply with "impartial conduct standards" if their direct or indirect compensation may vary based on the advice provided. The "impartial conduct standards" generally require financial institutions and advisers to give prudent investment advice that is in retirement investors' best interest, charge no more than reasonable compensation, and avoid misleading statements.

Temporary Enforcement Policy. The DOL has extended its temporary enforcement policy, under which it will not take enforcement action against financial institutions and advisers that are acting in good faith to comply with the Fiduciary Rule and related exemptions, until the end of the extended transition period. However, during the transition period the DOL expects financial institutions and advisers to adopt policies and procedures to ensure compliance with the impartial conduct standards. Based on its review of comments and meetings with stakeholders, the DOL believes that many financial institutions have already upgraded their compliance infrastructures to ensure that the impartial conduct standards are being met. Financial institutions and advisers that do not comply with the impartial conduct standards during the transition period may still be subject to prohibited transaction excise taxes and, in some cases, private causes of actions, particularly with respect to advice given to roll over assets from an ERISA-covered plan to an IRA.

Coordination with Other Regulators. The DOL notes that it intends to coordinate further changes to the Fiduciary Rule and related exemptions with other regulators of broker dealers and other fiduciary advisers, including the SEC, the Financial Industry Regulatory Authority (FINRA), and the National Association of Insurance Commissioners.

Streamlined Exemption Anticipated. The DOL reiterated that a new streamlined class exemption will be issued "in the near future," which may also be coordinated with other regulators.