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DOL Finalizes 60-Day Delay to Fiduciary Rule Applicability

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The Presidential Memorandum directing the Department of Labor (the "Department") to review the Fiduciary Rule (the "Rule") produced its first significant regulatory impact for the investment advisor community yesterday as the Department finalized its proposed 60-day delay to the application of the Rule on April 4, 2017. (See our blog post on the proposed delay here.) This announcement also delays the Rule's related prohibited transaction exemptions, including the Best Interest Contract Exemption ("PTEs"). As a result of the delay, the Fiduciary Rule and the PTEs are set to become effective until June 9, 2017.

The PTEs have a transition period in which only certain exemption conditions apply, which ends on January 1, 2018. The end of the transition period is not affected by this delay. However, in addition to delaying the Rule's applicability date, the Department stripped out some of the key requirements for fiduciaries during the transition period, including acknowledging their fiduciary status and disclosing conflicts of interest. As revised, fiduciary advisers will only have to act impartially in the interests of their clients during the transition period to comply with the Best Interest Contract Exemption.

The Department's proposed delay to the Rule included a 15-day comment period. By the end of the comment period, the Department received over 193,000 comments and petition letters, with 15,000 commenters supporting a delay and 178,000 opposing any delay to the Rule. In justifying the Rule's delay, the Department concluded that "some delay in full implementation of the Fiduciary Rule and PTEs is necessary to conduct a careful and thoughtful process pursuant to the Presidential Memorandum." Although the investment advisory community has speculated that the review mandated by the Presidential Memorandum would require more than 60 days to conduct, the Department has thus far declined to pursue a longer delay of the Rule, stating, "it would be inappropriate to broadly delay application of the fiduciary definition and Impartial Conduct Standards for an extended period in disregard of [the Department's] previous findings of ongoing injury to retirement investors."

The public comment period on the merits or burdens of the Rule pursuant to the Presidential Memorandum does not expire until April 17th. As the Department evaluates those comments and the results of its review of the Rule, the Rule could be further delayed, revised, or rescinded. In the meantime, the enforcement guidance issued by the Department and the IRS have been rendered moot by the Rule's delayed applicability. (See our prior blog posts here and here.) As a result, the investment advisor community should continue to prepare for the Rule's application, which is, for now, scheduled for June 9th.