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DOL Proposes an Extension of the Fiduciary Rule Transition Period

By John I. Sanders

When the DOL Fiduciary Rule became effective on June 9th, it marked the start of a transition period that was scheduled to end on January 1, 2018 (the “Transition Period”). [i] During the Transition Period, compliance burdens under the Fiduciary Rule are relaxed. For example, those seeking to rely on the Best Interest Contract Exemption (the “BIC Exemption”) will face less stringent requirements. [ii] Also, the DOL stated that it would not bring enforcement actions during the Transition Period against “fiduciaries who are working diligently and in good faith to comply with the new rule and exemptions.” [iii] Last week, the DOL submitted proposed amendments to the BIC Exemption and certain other exemptions to the Fiduciary Rule. [iv] We learned of this development through a 2-page filing the DOL made in relation to ongoing litigation. [v] Unfortunately, the filing provided little detail, and the full text of the proposed amendments will not be available to the public until the conclusion of an interagency review. [vi] However, what seems apparent, based upon the title of the proposed amendments in the filing, is that the proposed amendments include an extension of the Transition Period from January 1, 2018 to July 1, 2019. [vii] In the long term, we believe that the DOL’s proposed amendments foreshadow either significant modifications to or a full repeal of the Fiduciary Rule and its exemptions. In the near term, we believe the extension of the Transition Period, coupled with the temporary non-enforcement policy, provides fiduciaries with a reason to breathe easier. Please contact us if you have any questions about this article or the DOL Fiduciary Rule generally. **John I. Sanders** is an associate based in the firm’s Winston-Salem office. [i] Department of Labor, *Conflict of Interest FAQs (Transition Period) (May 2017)*, available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/coi-transition-period-1.pdf>. [ii] *Id.* [iii] *Id.* [iv] *Thrivent Financial for Lutherans v. Acosta, et al.*, No. 0:16-cv-03289 (D. Minn. Sept. 29, 2016), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwjTqJP_utzVAhWI7CYKHdKTDrcQFggrMAE&url=http%3A%2F%2Fmedia.thinkadvisor.com%2Fthinkadvisor%2Farticle%2F2017%2F08%2F09%2Fthriventvdolnotice8-9-2017.pdf&usg=AFQjCNFWeSsTSR6C69Z17yHF1q1a7bkDpg. [v] *Id.* [vi] *Id.* [vii] *Id.*