Lowenstein Sandler

Investment Management and Employee Benefits & Executive Compensation

December 1, 2017

Share:

Department of Labor Grants 18-Month Delay of Significant Features of the Fiduciary Rule

By Andrew E. Graw, Esq., Scott H. Moss, Esq., and Megan Monson, Esq.

In the ever-evolving saga of the Fiduciary Rule, on November 27, 2017, the U.S. Department of Labor (DOL) released a final regulation delaying important elements of the Fiduciary Rule until July 1, 2019.

As we have previously reported (see our Client Alert New Guidance Establishes June 9 Effective Date for Fiduciary Rule, but also Raises Uncertainty as the DOL Continues to Review the Rule), DOL regulations regarding who is considered a fiduciary under ERISA (the Fiduciary Rule) went into effect on June 9, 2017, though the effectiveness of certain provisions was delayed until January 1, 2018. Regulations issued by the DOL on November 27, 2017, further delay the effectiveness of those provisions for 18 months–until July 1, 2019.

The delay has a limited, though important, impact. Absent the delay, advisors would have needed to make sure that, effective January 1, 2018, advisory service contracts with IRAs include written representations that the advisor will adhere to the following "impartial conduct standards":

- Make recommendations that are in the customer's best interest
- Adhere to duties of prudence and loyalty
- Receive no more than reasonable compensation
- Not make materially misleading statements

While the delay allows advisors to avoid having to modify their contracts, advisors must still comply with these impartial conduct standards (as has been required since June 9, 2017, when the Fiduciary Rule first became effective).
In connection with this new action, the DOL has formally extended a temporary enforcement policy announced earlier this year. Under this temporary enforcement policy, the DOL will not pursue claims against fiduciaries who are working diligently and in good faith to comply with the Fiduciary Rule and applicable provisions of related best interest contract (BIC) and principal transaction exemptions, or treat those fiduciaries as being in violation of the Fiduciary Rule and BIC and principal transaction exemptions.

In issuing the delay, the DOL noted that additional time is needed for the DOL to reexamine the Fiduciary Rule, as directed by President Trump soon after his inauguration. The DOL noted that "whether, and to what extent, there will be changes to the Fiduciary Rule [and related exemptions] is unknown." In addition, the DOL indicated that it anticipates it will propose a new and more streamlined exemption based in part upon recent innovations in the financial services industry.

While the ultimate fate of the Fiduciary Rule is still unknown, the delay means that advisors need not meet the written contractual requirements of the Fiduciary Rule and related exemptions that were scheduled to take effect January 1, 2018. In the interim, advisors should await (and expect) further guidance as the Fiduciary Rule saga continues to unfold.

Contact Us

for information about this alert:

Andrew E. Graw
Partner and Chair, Employee Benefits and Executive Compensation Group
973.597.2588
agraw@lowenstein.com

Scott H. Moss
Partner and Co-chair, Regulatory and Compliance
646.414.6874
smoss@lowenstein.com

Megan Monson
Associate
973.597.2570
mmonson@lowenstein.com

Related Areas

Investment Management

Employee Benefits & Executive Compensation

Publications

Department of Labor Proposes Delay of Significant Features of the Fiduciary Rule to July 1, 2019

New Guidance Establishes June 9 Effective Date for Fiduciary Rule, but also Raises Uncertainty as the DOL Continues to Review the Rule

Fiduciary Rule Update: Department of Labor Issues Temporary Enforcement Relief

NEW YORK PALO ALTO NEW JERSEY UTAH WASHINGTON, D.C.