

Insights

DOL Requests More Information in Fiduciary Rule Examination

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The U.S. Department of Labor (DOL) is looking for more input about possible changes to the Fiduciary Rule and even possible further delay of some of its applicability. On June 29, 2017, the DOL released a Request for Information regarding the Fiduciary Rule and prohibited transaction exemptions, which will be published in an upcoming edition of the Federal Register.

After a February 3, 2017 Presidential Memorandum directed the DOL to examine the Fiduciary Rule and update the economic and legal analysis concerning the likely impact of the Rule, the DOL extended applicability of portions of the Rule (e.g., the definition of fiduciary and impartial conduct standards) to June 9, 2017. Other portions of the Fiduciary Rule are to be phased in by January 1, 2018. Among these other portions are newly created Best Interest Contract and Principal Transaction Exemptions, as well as amendments of other exemptions, from the prohibited transaction provisions of ERISA. Ahead of the June 9 effective date for portions of the Rule, the DOL issued a Temporary Enforcement Policy providing that through the phase-in period, the DOL will not pursue fiduciaries working diligently and in good faith to comply with the Fiduciary Rule and exemptions, and it will not treat those fiduciaries as being in violation.

The new Request for Information seeks additional input from the public about other possible exemption approaches or changes in the Fiduciary Rule. The DOL says previous public comment on the Fiduciary Rule suggests that recent innovations in the financial services industry might provide bases for new, more streamlined exemptions and compliance methods. The DOL also seeks comment from the public as to whether the January 1, 2018 applicability date for remaining portions of the Rule should be extended further.

Comments relating to extension of the January 1, 2018 date must be submitted in writing to the DOL within the 15-day period following publication in the Federal Register (scheduled for July 6). There will be a 30-day comment period with respect to all other matters addressed in the Request for Information.

You can read our previous posts following developments surrounding the Fiduciary Rule on the Krieg DeVault Employee Benefits Blog. Stay tuned to the Blog or contact one of our Employee Benefits attorneys for further updates.