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DOL Fiduciary Rule Enforcement – Confusion and Disruption Relief

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As explained in our March 2, 2017 article, the Department of Labor ("DOL") has proposed to delay for 60 days the "applicability date" of the Fiduciary Rule ("Rule"), and the new and revised prohibited transaction exemptions related to the Rule. The proposed delay has created confusion within the financial services industry because it is not certain that a final rule implementing the delay can be published (and become effective) before the Rule's April 10th applicability date. In response to the confusion, the DOL issued Field Assistance Bulletin 2017-01 ("Bulletin") announcing a temporary enforcement policy that assures advisers and financial institutions that the DOL will not seek to enforce the Rule or the related prohibited transaction exemptions in the event the Rule becomes applicable before it is officially delayed.

In the Bulletin, the DOL states its intention to issue a decision on the proposed rule in advance of the April 10th applicability date. Nevertheless, the DOL's temporary enforcement policy applies as follows:

- If the DOL issues a final regulation delaying the Rule, but such regulation is not finalized until *after* April 10th, the DOL will not initiate enforcement action against an adviser or financial institution for not satisfying the Rule or the prohibited transaction exemptions during the period between the date the Rule becomes applicable and the date the delay is implemented.
- If the DOL decides to *not* issue a delay, the DOL will not initiate enforcement action against an adviser or financial institution due to a failure to satisfy the conditions of the Rule or the prohibited transaction exemptions, provided the conditions are satisfied within a reasonable time after the DOL issues its decision to not delay the April 10th applicability date.

While the temporary enforcement policy provides clarity regarding the DOL's approach to enforcing compliance with the Rule and the prohibited transaction exemptions during this period of uncertainty regarding the applicability date of the Rule, the policy does not indicate what decision the DOL may make with respect to the future of the Rule. It also does not provide any relief against lawsuits by investors for failure to comply with the Rule if and when it becomes applicable. Thus, the confusion and disruption relief provided to advisers and financial institutions by the policy may not be as extensive as it appears.

AUTHORS

- Beth Miller

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