DOL's Fiduciary Rule Countdown

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For investment advisers and financial institutions, the countdown to compliance with the Department of Labor's new "conflict of interest" rule ends on June 9, 2017. The Department of Labor ("DOL") issued a final rule on April 7, 2017, that delays the original applicability date of its conflict of interest regulation (the "Fiduciary Rule") and its related prohibited transaction exemptions for 60 days, creating a "Transition Period" that starts on June 9, 2017, and ends on December 31, 2017. During the Transition Period, the Fiduciary Rule's expanded definition of "fiduciary" applies, and advisers and financial institutions providing investment advice as fiduciaries must comply with the Rule's "impartial conduct" standards. As of June 9, the DOL's temporary enforcement policy, discussed in our March 17, 2017, article, as well as the Internal Revenue Service's excise tax relief, are no longer available. As a result, advisers and financial institutions must be ready to comply with the bulk of the Fiduciary Rule on June 9, 2017. The full scope of the Fiduciary Rule and its related prohibited transaction exemptions becomes applicable on January 1, 2018.

With the June 9 deadline quickly approaching, the financial services industry should be making final preparations for implementing this stage of the Fiduciary Rule. Those preparations should include:

- Applying the new definition of "fiduciary."
  - Advisers and financial institutions need to answer any lingering questions about whether their services include providing investment "recommendations" for direct or indirect compensation.
  - If advisers or financial institutions want to avoid fiduciary status under the new Rule, they should review and modify their services to align with those the DOL identified as *not* creating fiduciary status.
- Applying the impartial conduct standards.
  - Advisers and financial institutions who will be providing services as fiduciaries must implement programs to ensure that they:
    - Offer advice that is in the investor's best interest (*i.e.,* prudent based on the investment objectives, risk tolerance, financial circumstances, and needs of the investor);
    - Charge no more than reasonable compensation; and
    - Make no misleading statements.

The appointment of Alexander Acosta as the new Labor Secretary, the letter Acosta received from members of Congress urging the DOL to delay the Rule in its entirety, and criticism of the Fiduciary Rule by then-acting Chairman of the Securities and Exchange Commission, Michael Piwowar, has generated speculation that the Fiduciary Rule will be further delayed or repealed. With less than 30 business days before the Transition Period begins, however, the financial services industry should use the remaining time to finalize preparations for compliance with the Fiduciary Rule, and leave speculation for a later date.

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