DOL Provides Relief from Fiduciary Rule Enforcement Action Ahead of Proposed Delay

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On March 10, the U.S. Department of Labor ("DOL") issued Field Assistance Bulletin No. 2017-01, which provides transitional relief from enforcement actions related to compliance with the DOL's final Fiduciary and Conflict of Interest Rule ("Fiduciary Rule") and related Prohibited Transaction Exemptions ("PTEs").

The DOL's Fiduciary Rule is currently scheduled to have an application date of April 10, 2017. Following a directive from President Trump to review the Fiduciary Rule for adverse effects on Americans' access to retirement information and financial advice, the DOL published a proposal to delay applicability of the Fiduciary Rule for 60 days while it completes its review. Anticipating that the 60-day delay may not be implemented prior to April 10 (or at all), Field Assistance Bulleting No. 2017-01 provides for relief from enforcement during the gap between the Fiduciary Rule's applicability date and any action taken related to a delay of the Fiduciary Rule and related PTEs:

- If the DOL issues a delay after April 10, the DOL will not take enforcement action against an adviser or financial institution for failure to satisfy the conditions of the Fiduciary Rule or related PTEs during the gap between applicability (April 10) and the effective date of the delay.
- If the DOL does not issue a delay, the DOL will not initiate an enforcement action against an adviser or financial institution if an adviser or financial institution that is not in compliance on April 10 sends required disclosures and related documents to retirement investors within a "reasonable period" following the decision not to issue a delay. The DOL is allowing at least a 30-day period to remedy compliance under the PTEs, including the best-interest contract and principal transactions exemptions.

While this relief is welcome news for advisers and financial institutions while the potential delay in applicability of the Fiduciary Rule is sorted out, until an actual delay in the Fiduciary Rule's implementation is issued by the DOL affected parties should continue to assess their compliance obligations and take any necessary actions.

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