

## DOL Announces Fiduciary Rule Delay: What Does it Mean for Employers Who Sponsor Retirement Plans?

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The **Department of Labor (“DOL”)** recently published a final regulation providing a 60-day extension (from April 10th to June 9th) of the applicability date for the **Fiduciary Rule** — the rule that expands the definition of an employee benefit plan “fiduciary” to include members of the financial services industry — as well as exemptions from that definition, including the Best Interest Contract Exemption (“BIC Exemption”) (PTE 2016-01) and the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016-02).

The DOL’s final regulation also requires those fiduciaries who rely on the exemptions — which include securities broker/dealers, agents, insurance companies and benefit consultants who advise employee benefit plans — to adhere to “Impartial Conduct Standards” through a new transition period from June 9, 2017 to January 1, 2018.

Effective January 1, 2018, the Impartial Conduct Standards require written statements to appear in any contract for services when a securities broker/dealer, agent or consultant renders advice to an employee benefit plan in exchange for fees or commissions. The Impartial Conduct Standards also require, among other things, that such broker/dealers, agents or consultants disclose in a written contract that they are ERISA fiduciaries, that they will render advice solely for the benefit of the plan, that they will charge a reasonable fee, that they will disclose any conflicts of interest, and that they will not receive incentives for recommending any particular investment.

Also extended for 60 days are the new amendments to prohibited transaction rules: PTEs 75-1, 7-4, 80-83, 84-24, and 86-128. These amended PTEs provide relief from prohibited transaction excise taxes when securities are sold to employee benefit plans, when plan assets are deposited in mutual funds, when securities are sold to generate funds to be paid out as retirement benefits to plan participants, and when non-discretionary trustees or other fiduciaries receive fees in connection with plan investment transactions.

What does this mean for employers who sponsor retirement plans, such as 401(k) and 403(b) plans? Employers need to be aware that the Fiduciary Rule — and any delay of the applicability date thereof — **does not** impact employer fiduciary responsibility under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) with regard to the retirement plans they sponsor.

Employers should expect that their financial service industry plan service providers will be in touch concerning amendments to service agreements to incorporate the terms required by the Impartial Conduct Standards.

For more information on the DOL announcement, please see <https://federalregister.gov/d/2017-06914>.

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