

## DOL Fiduciary Rule – Another Extension on the Horizon!

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Will it, won't it, and when will it/won't it? The saga of the ERISA fiduciary rule and related exemptions, including the Best Interest Contract Exemption (BICE), continues. Continued lobbying efforts and the introduction of a new bill by Representative Roe (R-Tenn) into the House of Representatives, called the Affordable Retirement Advice for Savers Act, H.R. 2823, are not all the news on this front. According to a "Notice of Administrative Action" filed by the United States Department of Labor (DOL) and Labor Secretary Acosta, the new proposed applicability date of the BICE and related Prohibited Transaction Exemptions (PTEs) **is July 1, 2019**—rather than January 1, 2018.

The notice was filed on August 9, 2017, in the course of a lawsuit filed by Thrivent Financial for Lutherans, a Christian fraternal benefit society that provides insurance and financial services to its members, challenging portions of the BICE. In it, the DOL notified the United States District Court for the District of Minnesota that it submitted to the Office of Management and Budget (OMB) proposed amendments to delay the applicable date of the BICE and the PTEs, including Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016-02) and Prohibited Transaction Exemption 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters (PTE 84-24). According to the notice, the applicability date of the BICE and PTEs would be pushed back 18 months from January 1, 2018, to July 1, 2019.

As with prior guidance, we expect that the IRS would follow suit in delaying enforcement of the excise tax rules relating to prohibited transactions in conjunction with the DOL's enforcement policy (under the reasoning it set forth in IRS Announcement 2017-4).

The DOL's notice provided no details or explanation on the proposed delay. However, the OMB submission is supposed to become publicly available this morning at <https://www.reginfo.gov/public/jsp/EO/eoDashboard.jsp>.

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