

MEMO# 30637

March 13, 2017

DOL Announces Temporary Enforcement Policy on Fiduciary Rule

[30637]

March 13, 2017 TO: ICI Members SUBJECTS: Pension RE: DOL Announces Temporary Enforcement Policy on Fiduciary Rule

On March 10, 2017, the Department of Labor (the Department) issued Field Assistance Bulletin 2017-01 (the FAB),[\[1\]](#) announcing a temporary enforcement policy related to its recent proposal to delay the applicability date of the final rule and related prohibited transaction exemptions (PTEs) for 60 days.[\[2\]](#) The FAB addresses concerns from financial institutions that the Department may decide not to issue a delay after reviewing the public comments or that there may be a “gap” period if the delay is not finalized before April 10 and the rule becomes applicable for a short period of time.

Although the Department intends to issue a decision regarding the 60-day delay prior to April 10, it is granting temporary enforcement relief “to protect against investor confusion and related marketplace disruptions attributable to uncertainty regarding the timing of the Department’s decision on whether to delay the applicability date of the fiduciary duty rule and related PTEs.” Under the relief, if there is a gap period before the delay is published, the Department will not bring an enforcement action for failure to satisfy the rule or PTEs during the gap period. The FAB also provides limited relief in the event the Department decides not to issue a delay.

The FAB provides the following temporary enforcement policy:

- A. In the event the Department issues a final rule after April 10 implementing a delay in the applicability date of the fiduciary duty rule and related PTEs, the Department will not initiate an enforcement action because an adviser or financial institution did not satisfy conditions of the rule or the PTEs during the “gap” period in which the rule becomes applicable before a delay is implemented, including a failure to provide retirement investors with disclosures or other documents intended to comply with provisions of the rule or the related PTEs.
- B. In the event the Department decides not to issue a delay in the fiduciary duty rule and related PTEs, the Department will not initiate an enforcement action because an adviser or financial institution, as of the April 10 applicability date of the rule, failed to satisfy conditions of the rule or the PTEs provided that the adviser or financial institution satisfies the applicable conditions of the rule or PTEs, including sending out

required disclosures or other documents to retirement investors, within a reasonable period after the publication of a decision not to delay the April 10 applicability date. The Department will also treat the 30-day cure period under Section IX(d)(2)(vi) of the BIC Exemption and Section VII(d)(2)(v) of the Principal Transactions Exemption as available to financial institutions that, as of the April 10 applicability date, did not provide to retirement investors the disclosures or other documents described in Section IX(d)(2)(vi) of the BIC Exemption and Section VII(d)(2)(v) of the Principal Transactions Exemption.

The FAB notes that the Department will consider the need for additional temporary relief, including prohibited transaction relief, to the extent the need arises. The FAB also makes clear that it does not address the rights or obligations of other parties.

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endnotes

[1] The Field Assistance Bulletin is available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2017-01>.

[2] For a description of DOL's proposal to delay the applicability date of the final rule, see ICI Memorandum No. 30617, dated March 2, 2017, available at <https://www.ici.org/committees/pension/memo30617>.