

MEMO# 30617

March 2, 2017

DOL Proposes 60-Day Delay of Fiduciary Rule Applicability Date, Requests Comments

[30617] March 2, 2017 TO: ICI Members SUBJECTS: Pension RE: DOL Proposes 60-Day Delay of Fiduciary Rule Applicability Date, Requests Comments

As expected, the Department of Labor (DOL) has proposed a delay to the applicability dates for the 2016 final regulation defining fiduciary investment advice under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code, and the associated prohibited transaction exemptions.^[1] The notice of proposal and request for public comment is available [here](#). The proposal would extend the applicability dates by 60 days—from the originally-scheduled April 10, 2017 to June 9, 2017. Comments on this proposed extension are due March 17, 2017 (a 15-day comment period).

The notice of proposal also requests public comment on the examination required by the President's February 3, 2017 memorandum to DOL, which directed DOL to examine whether the final fiduciary rule may adversely affect the ability of Americans to gain access to retirement information and financial advice, and to prepare an updated economic and legal analysis concerning the likely impact of the final rule.^[2] The memorandum further instructs DOL, based on this review and analysis, to determine whether to propose rescinding or modifying the final rule. Comments relating to the examination and analysis required by the President's memorandum are due April 17, 2017 (a 45-day comment period).

The notice explains that the proposed 60-day delay is intended to give DOL time to undertake the examination required by the President's memorandum (as opposed to, for example, to alleviate the compliance concerns of the industry). The notice explains that the 60-day delay would guard against the risk of disruption of the marketplace that would result from the rule and exemptions becoming applicable before DOL completes the examination and determinations required by the President's memorandum regarding whether to rescind or revise the rule.

Questions Raised in the Notice of Proposal

The notice asks a number of questions relating to both the 60-day delay and the examination required under the President's memorandum. For example, with respect to the 60-day delay, the notice asks questions about the impact of the delay on retirement investors and questions regarding potential savings in compliance "start-up costs"

associated with a delay in the applicability date. It also asks whether DOL should delay applicability of all, or only part, of the final rule's provisions and exemption conditions. The notice offers as an example, "under an alternative approach, the Department could delay certain aspects (e.g., notice and disclosure provisions) while permitting others (e.g., the impartial conduct standards set forth in the exemptions) to become applicable on April 10, 2017." The notice also asks for comments on whether a different delay period would best serve the interests of investors and the industry.

With respect to the broader examination of the final rule and associated exemptions required by the President's memorandum, the notice asks for information on the impact of the rule in various areas, such as:

- Whether the projected investor gains [under DOL's 2016 regulatory impact analysis ("RIA")] could be offset by a reduction in consumer investment, if consumers have reduced access to retirement savings advice as a result of the final rule, and whether there is any evidence of such reduction in consumer investment to date.
- Whether the final rule and exemptions so far have moved markets or appear likely to move markets in a direction toward a more optimal mix of advisory services and financial products.
- The emerging and expected effects of the final rule and exemptions on retirement investors' access to quality, affordable investment advice services and investment products, including small investors' access.
- Comments that might help inform updates to DOL's legal and economic analysis, including any issues the public believes were inadequately addressed in the RIA and particularly with respect to the issues identified in the President's memorandum.
- Comments on market responses to the final rule and prohibited transaction exemptions to date, and on the costs and benefits attached to such responses—with a series of specific questions relating to: changing business models, product offerings, compensation practices, investor behavior, and implementation efforts and costs incurred by the industry to date.

Finally, the notice requests comment on each of the possible outcomes of the examination and economic analysis: (1) allowing the final rule and exemptions to become applicable, (2) issuing a further extension of the applicability date, (3) proposing to withdraw the rule, or (4) proposing amendments to the rule and/or the exemptions.

ICI is preparing comments in response to the proposed 60-day delay and the request for information to inform DOL's re-examination of the rule.

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endnotes

[1] See ICI Memorandum No. 29837 dated April 13, 2016. Available at https://www.ici.org/my_ici/memorandum/memo29837.

[2] The President's memorandum to the Secretary of Labor is available [here](#).

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