

MEMO# 30667

April 6, 2017

DOL Finalizes 60-Day Delay of Fiduciary Rule Applicability Date

[30667]

April 6, 2017 TO: ICI Members SUBJECTS: Pension RE: DOL Finalizes 60-Day Delay of Fiduciary Rule Applicability Date

The Department of Labor has finalized a 60-day delay to the applicability dates of 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 (PTEs). As proposed,[\[1\]](#) the rule extends the applicability dates from April 10, 2017 to June 9, 2017. The final rule is available [here](#).

The Department's announcement indicates that on June 9, 2017, the final rule defining fiduciary investment advice will become effective, even if the Department has not yet completed the re-examination of the rule required by the President's February 3, 2017 memorandum to the Department. That memorandum directed the Department 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 announcement also provides that the "impartial conduct standards" under the Best Interest Contract (BIC) Exemption, Principal Transactions Exemption, and other amended PTEs will become effective on June 9, 2017.[\[3\]](#)

The other conditions of the BIC and Principal Transactions Exemptions (and the other amendments to PTE 84-24) will not become applicable until January 1, 2018 at the earliest, and could be further delayed if the Department deems necessary as part of its re-examination of the rule. The final delay rule states that "[t]he other requirements of these PTEs, including representations of fiduciary compliance, contracts, warranties about firm's policies and procedures, etc., will not become applicable during the period in which the Department performs the mandated examination of the Rule and PTEs."[\[4\]](#)

The announcement specifies that the special transition period disclosure requirements under the BIC and Principal Transactions Exemptions that would have been applicable between April 10, 2017 and January 1, 2018 (but for the delay), are eliminated.[\[5\]](#)

In the final delay, the Department acknowledges that the re-examination of the rule pursuant to the President's memorandum "is likely to take more time to complete than a 60-day extension would afford."[\[6\]](#) The Department further explains that "[f]ollowing the

completion of the examination, some or all of the Rule and PTEs may be revised or rescinded, including the provisions scheduled to become applicable on June 9, 2017” and “[t]his document’s delay of the applicability dates as described above should not be viewed as prejudging the outcome of the examination.”^[7]

Elena Barone Chism
Associate General Counsel

endnotes

^[1] See ICI Memorandum No. 30617, dated March 2, 2017. Available at <https://www.ici.org/committees/pension/memo30617>. For a description of the fiduciary rule and exemptions, 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](#). The memorandum further instructs DOL, based on this review and analysis, to determine whether to propose rescinding or modifying the final rule. Public comments relating to the examination and analysis required by the President’s memorandum are due April 17, 2017.

^[3] As described in the exemptions, the “impartial conduct standards” require advice to be in the investor’s best interest, prohibit receipt of any more than reasonable compensation, and prohibit misleading statements to the investor.

^[4] See page 14 of the final rule (unpublished version) available at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2017-06914.pdf>.

^[5] See *id.* at 41-42.

^[6] See *id.* at 12.

^[7] See *id.* at 18.