INVESTMENT COMPANY INSTITUTE

MEMO# 30795

July 21, 2017

ICI Submits Comment Letter to DOL Supporting Delay of January 1, 2018, Applicability Date for Fiduciary Rulemaking

[30795]

July 21, 2017 TO: ICI Members
Pension Committee
Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI Submits Comment Letter to DOL Supporting Delay of January 1, 2018, Applicability Date for Fiduciary Rulemaking

On July 21, 2017, ICI submitted the attached letter to the Department of Labor (DOL) in response to DOL's request for information (RFI) regarding a delay of the January 1, 2018 applicability date of DOL's fiduciary rulemaking.[1] Our letter urges DOL to delay immediately the January 1, 2018 applicability date to January 1, 2019. It also urges DOL to simultaneously announce that it expects to finalize modifications to the rule and the relevant exemptions prior to the end of any delay period. We also request that DOL declare now that amendments to the rulemaking will not take effect until at least one year after they are finalized.

The letter provides the following key points in support of a delay.

The Department undoubtedly will propose modifications to the fiduciary rule and related exemptions. The President's February 3, 2017 memorandum, Labor Secretary Acosta's and SEC Chairman Clayton's express efforts to coordinate on the fiduciary rulemaking, and recent DOL acknowledgements that it exceeded its authority by issuing the Best Interest Contract Exemption's ("BICE") prohibition on contractual class action waivers all indicate that the DOL will modify the fiduciary rulemaking. Moreover, the Department's queries in the RFI itself show that potential modifications are already being considered. A delay is needed to allow DOL to reexamine the final rulemaking and prepare an updated economic and legal analysis as directed by the President. A delay also will permit DOL to benefit from the SEC's input in that review. Failing to delay the January 1, 2018 applicability date while this review is ongoing will only perpetuate the harms the rulemaking has caused.

The benefits of delaying the January 1, 2018 applicability date outweigh the

speculative and illusory costs of such a delay. DOL already has effectively concluded that delaying the January 1, 2018 applicability date will not negatively affect investors, as the fiduciary rule and the Impartial Conduct Standards are already in effect. DOL's speculation that there may be some lapses in compliance during the transition period is not sufficient to suggest that a delay would harm investors. In fact, not delaying the January 1, 2018 applicability date will harm investors because the rule is already negatively affecting them.[2] Intermediaries are orphaning accounts and are changing business models in a manner that is causing some investors to either pay more for advice or lose access to advice altogether. A delay would result in substantial cost-savings for financial institutions by allowing them to avoid the significant and burdensome costs of implementation that ultimately will prove unnecessary if the rulemaking is modified.

Shannon Salinas
Assistant General Counsel - Retirement Policy

Attachment

endnotes

[1] The RFI, published at 82 Fed. Reg. 31278 (July 6, 2017), is available here: https://www.gpo.gov/fdsys/pkg/FR-2017-07-06/pdf/2017-14101.pdf. *See* ICI Memorandum No. 30767, dated July 6, 2017, available here: https://www.ici.org/my_ici/memorandum/memo30767.

[2] We note that DOL's 2016 regulatory impact analysis was fundamentally flawed and incorrectly calculated harm to investors in the form of foregone gains. The APA does not require that DOL continue to use this inaccurate calculation.