

MEMO# TAAC_12_30767_0717

July 12, 2017

12 DOL Issues RFI on Potential Changes to the Fiduciary Rule and Related Exemptions

[30767]

July 6, 2017 TO: ICI Members SUBJECTS: Pension RE: DOL Issues RFI on Potential Changes to the Fiduciary Rule and Related Exemptions

As expected, the Department of Labor (DOL) has issued a request for information (RFI)[\[1\]](#) regarding 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).[\[2\]](#)

In the RFI, DOL notes that it is still in the process of reviewing and analyzing the comments received in March and April 2017.[\[3\]](#) DOL states in the RFI that, as it conducts its review, it would like additional public input regarding potential new PTEs and changes to the fiduciary definition and existing PTEs. DOL also discusses the possibility that it could build upon recent innovations to create streamlined exemptions and compliance mechanisms. In this respect, DOL is particularly interested in the potential uses of clean shares.

Questions Raised in the RFI

The RFI includes 18 questions (each with multiple sub-questions) on the following topics:

- Potential delay of the January 1, 2018 compliance date;[\[4\]](#)
- General questions regarding the rule and the PTEs, compliance activity to date, and the costs, benefits and alternatives to the PTE conditions scheduled to become required on January 1, 2018;
- The contract requirement in the BIC Exemption and Principal Transactions Exemptions, including whether the contractual and warranty requirements should be altered or eliminated;
- Possible alternative streamlined exemptions (such exemptions may be based on clean shares, fee-based annuities, other market innovations);
- Incorporation of securities regulation of fiduciary investment advice;
- Principal transactions;
- Disclosure requirements;
- Contributions to plans or IRAs (i.e., should recommendations to make or increase contributions be excluded from the definition of advice);

- Bank deposits and similar investments;
- Grandfathering;
- PTE 84-24; and
- Communications with independent fiduciaries with financial expertise.

Comments relating to the potential delay of the January 1, 2018 compliance date are due July 21, 2017 (a 15-day comment period). Comments related to all other questions in the RFI are due August 7, 2017 (a 30-day comment period).

As discussed previously, we will coordinate our submission to the DOL RFI with ICI's response to SEC Chair Clayton's request for input on standards of conduct for investment advisers and broker-dealers^[5] in an effort to deliver a unified message to both agencies.

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endnotes

[1] The RFI, published at 82 Fed. Reg. 31278 (July 6, 2017), is available at <https://www.gpo.gov/fdsys/pkg/FR-2017-07-06/pdf/2017-14101.pdf>.

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

[3] On March 2, 2017, in connection with a proposal to delay the applicability date of the rule for 60 days, DOL requested comments both on the 60-day delay (due March 17, 2017) and on its re-examination of the rule (due April 17, 2017). The proposal was published at 82 Fed. Reg. 12319 (March 2, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-03-02/pdf/2017-04096.pdf>.

[4] Compliance is scheduled to be required by January 1, 2018 for all conditions (other than the Impartial Conduct Standards, which were required to be met by June 9, 2017) of the Best Interest Contract (BIC) Exemption, the Principal Transactions Exemption and the amendments to PTE 84-24. As a reminder, on March 17, 2017, ICI submitted comments urging DOL to delay the rulemaking and to synchronize the setting of the applicability date with DOL's determination as to whether to rescind or modify the rule. See ICI Memorandum No. 30648 dated March 20, 2017. Available at https://www.ici.org/my_ici/memorandum/memo30648. Similarly, ICI's April 17, 2017 comment letter argued that, pending its final determination (to revise or rescind), DOL must further delay the rule's applicability date until such a determination is made. See ICI Memorandum No. 30674 dated April 18, 2017. Available at https://www.ici.org/my_ici/memorandum/memo30674.

[5] See ICI Memorandum No. 30725 dated June 2, 2017. Available at <https://www.iciglobal.org/iciglobal/pubs/memos/memo30725>.

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