

MEMO# 30824

August 9, 2017

DOL Sends to OMB a Proposal to Delay the January 1, 2018 Applicability Date of the DOL Fiduciary Rulemaking to July 1, 2019

[30824]

August 9, 2017 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: DOL Sends to OMB a Proposal to Delay the January 1, 2018 Applicability Date of the DOL Fiduciary Rulemaking to July 1, 2019

On August 9, 2017, the Department of Labor (DOL) submitted to the Office of Management and Budget (OMB) a proposal to delay the January 1, 2018 applicability date of certain requirements under the DOL fiduciary rulemaking until July 1, 2019.[\[1\]](#) The proposed delay takes the form of proposed amendments to three exemptions: the Best Interest Contract Exemption, the Principal Transactions Exemptions, and PTE 84-24.

Although DOL's proposal has not yet been published on OMB's website, DOL today provided notice of the submission in a filing to the court in its lawsuit with Thrivent (District of Minnesota).[\[2\]](#)

DOL's submission will soon appear on OMB's website on OMB's "List of Regulatory Actions Currently Under Review." DOL's proposal will be published once OMB completes its review. OMB typically takes up to 90 days to review regulatory actions, but in some cases, the review is completed much sooner. For example, OMB spent only 18 days reviewing DOL's proposal to delay the April 10, 2017 applicability date by 60 days.[\[3\]](#) OMB spent 23 days reviewing DOL's recent request for information (RFI).[\[4\]](#)

As a reminder, in our two recent comment letters, ICI urged DOL to issue immediately an interim final rule delaying the January 1, 2018 applicability date for one year.[\[5\]](#) In conjunction with this postponement, we recommended that DOL announce that it expects to finalize modifications to the fiduciary rule and related prohibited transaction exemptions prior to January 1, 2019 and that the applicability date of the modified rule and exemptions will become effective no sooner than January 1, 2020.

[Attachment](#)

endnotes

[1] The expanded definition of “fiduciary” in DOL’s final rulemaking became applicable on June 9, 2017. During the transition period between June 9, 2017 and January 1, 2018, fiduciary advisors can use the Best Interest Contract Exemption and Principal Transaction Exemption, as long as they meet the “impartial conduct standards” described in the exemptions. The other conditions of those exemptions and the amendments to PTE 84-24 (other than requiring compliance with the impartial conduct standards) currently are scheduled to become applicable on January 1, 2018. See ICI Memorandum No. 30667, dated April 6, 2017, available here: https://www.ici.org/my_ici/memorandum/memo30667.

[2] In this notice, which is attached to this memorandum, DOL notifies the court that it has submitted the proposed amendments, which are entitled:

Extension of Transition Period and Delay of Applicability Dates from January 1, 2018, to July 1, 2019; Best Interest Contract Exemption (PTE 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016-02); Prohibited Transaction Exemption 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters (PTE 84-24).

[3] DOL submitted the proposed rule on the Definition of the Term "Fiduciary" - Delay of Applicability Date to OMB on February 9, 2017; OMB completed its review on February 27, 2017; and DOL published the proposal in the Federal Register on March 2, 2017.

[4] DOL submitted the RFI on Fiduciary Rule and Prohibited Transaction Exemption to OMB on June 6, 2017; OMB completed its review on June 29, 2017; and DOL published the RFI in the Federal Register on July 6, 2017.

[5] ICI submitted a letter on July 21, 2017 in response to DOL’s RFI, regarding a delay of the January 1, 2018 applicability date. See ICI Memorandum No. 30795, dated July 21, 2017, available here: https://www.ici.org/my_ici/memorandum/memo30795. ICI submitted a second response to DOL’s RFI on August 7, 2017. See ICI Memorandum No. 30818, dated August 8, 2017, available here: https://www.ici.org/my_ici/memorandum/memo30818.