

**MEMO# 30872**

September 18, 2017

# ICI Submits Comment Letter to DOL Supporting Proposed 18-Month Delay of January 1, 2018, Applicability Date for Fiduciary Rulemaking

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September 18, 2017 TO: ICI Members  
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI Submits Comment Letter to DOL Supporting Proposed 18-Month Delay of January 1, 2018, Applicability Date for Fiduciary Rulemaking

On September 15, 2017, ICI submitted the attached letter to the Department of Labor (DOL) in response to DOL's proposal to delay for 18 months the January 1, 2018, applicability date of the fiduciary rulemaking.[\[1\]](#) Our letter expresses support for the 18-month delay and repeats our prior request that DOL also signal its intention to provide adequate time for the industry to comply with any changes that DOL implements.

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

**DOL needs time to complete its reexamination.** In the proposal, DOL states that it has not yet completed the reexamination of the rulemaking, including reviewing comments it received this year regarding both the reexamination and potential changes to the rulemaking.[\[2\]](#) Until DOL completes this reexamination, it cannot ascertain the extent of the modifications it will make to the rulemaking. In our letter, we agree that the delay is needed for DOL to complete the reexamination. Because DOL is likely to make changes to the rulemaking, it should not let any additional provisions of the rulemaking become applicable at this time.

**DOL needs time to coordinate with the SEC.** DOL acknowledges in the proposal that, absent a delay, the current timeframe will not accommodate DOL's desire to coordinate with the SEC in the development of modifications to the rulemaking. As we described in our August 7 letter to DOL,[\[3\]](#) coordination with SEC is critical to making the rulemaking workable. Therefore, we agree that a delay is needed to allow time for this coordination.

**The benefits of a delay outweigh any speculative costs.** We agree with DOL's assessment that a delay will help financial institutions avoid incurring costs to comply with

conditions that are likely to ultimately be revised. Investors will benefit from a more orderly transition. DOL also explains that the costs to investors of a delay are negligible, because the expanded fiduciary definition and Impartial Conduct Standards are already applicable. In our letter, we agree with this assessment and further reiterate that DOL's prior estimates of the costs of delay were speculative and illusory, and that DOL's prior calculation of the rulemaking's benefit to investors was based on a mathematical error that resulted in DOL overstating benefits by 15 to 50 times.

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Assistant General Counsel - Retirement Policy

## [Attachment](#)

### **endnotes**

[1] The proposal, published at 82 Fed. Reg. 41365 (August 31, 2017), is available here: <https://www.gpo.gov/fdsys/pkg/FR-2017-08-31/pdf/2017-18520.pdf>. The expanded definition of fiduciary and portions of the Best Interest Contract ("BIC") Exemption Principal Transactions Exemption became applicable on June 9, 2017. All remaining conditions of the BIC Exemption and Principal Transactions Exemption currently are scheduled to become applicable on January 1, 2018. During the transition period between June 9, 2017 and January 1, 2018 (the "Transition Period"), fiduciary advisers can use the BIC Exemption and Principal Transactions Exemption if they meet the Impartial Conduct Standards described in the exemptions. The other conditions of those exemptions are not applicable prior to January 1, 2018.

[2] On February 3, 2017, the President issued a memorandum to DOL directing it to reexamine the rulemaking. In March, DOL requested comments regarding the reexamination. 82 Fed. Reg. 12319 (March 2, 2017). In July, DOL published a request for information, requesting input regarding potential changes to the rule and BIC Exemptions and potential new exemptions or streamlined exemptions. 82 Fed. Reg. 31278 (July 6, 2017).

[3] See ICI Memorandum No. 30818, dated August 8, 2017, available here: [https://www.ici.org/my\\_ici/memorandum/memo30818](https://www.ici.org/my_ici/memorandum/memo30818).