

**MEMO# 30960**

November 28, 2017

# **DOL Finalizes 18-Month Delay of Transition Period for Fiduciary Rule Exemptions and Extends Temporary Enforcement Policy**

[30960]

November 28, 2017 TO: ICI Members

Bank, Trust and Retirement Advisory Committee

Broker/Dealer Advisory Committee

Operations Committee

Pension Committee

Pension Operations Advisory Committee

Small Funds Committee

Transfer Agent Advisory Committee SUBJECTS: Pension RE: DOL Finalizes 18-Month Delay of Transition Period for Fiduciary Rule Exemptions and Extends Temporary Enforcement Policy

Today, the Department of Labor (DOL) issued a final rule providing for an 18-month extension of (1) the transition period applicable to certain conditions of the prohibited transaction exemptions associated with its fiduciary advice rulemaking and (2) its previously-announced temporary enforcement policy.

## **18-Month Delay**

The final rule extends the end of the special transition period under sections II and IX of the Best Interest Contract (BIC) exemption (PTE 2016-01) and section VII of the Principal Transactions exemption (PTE 2016-02) from January 1, 2018 to July 1, 2019.[\[1\]](#) DOL adopted the proposed delay without any changes, including the proposed delay of certain amendments to PTE 84-24.[\[2\]](#) As a result of the delay, the remaining conditions of the BIC and Principal Transactions exemptions (and the amendments to PTE 84-24) beyond the “Impartial Conduct Standards,” will become applicable July 1, 2019, unless otherwise delayed or amended.

During the transition period (June 9, 2017 to July 1, 2019), those wishing to rely on the exemptions must adhere to the Impartial Conduct Standards only. In general, this means that providers must give prudent advice that is in the retirement investors’ best interest, charge no more than reasonable compensation, and avoid misleading statements. Also during the transition period, PTE 84-24 remains available for transactions involving fixed

indexed annuities and variable annuities, subject to the Impartial Conduct Standards.

In finalizing the 18-month delay, DOL also confirmed, among other things, that it has not yet completed the reexamination of the final fiduciary rule and exemptions, as directed by the President,[3] and that the previous timeframe of the special transition period would not accommodate its desire to coordinate with the Securities and Exchange Commission (SEC) and other regulators in the development of any new proposal or changes to the final fiduciary rule and exemptions.

## **Temporary Enforcement Policy**

In addition to the delay, DOL extended the temporary enforcement relief provided in FAB 2017-02[4] for the same period. The relief provides that during the transition period, DOL will not pursue claims against investment advice fiduciaries who are working diligently and in good faith to comply with the fiduciary rule and applicable conditions of the exemptions, or otherwise treat those fiduciaries as being in violation of the fiduciary rule and exemptions. According to the preamble to the final delay notice, the IRS and Treasury have indicated that DOL's extension of this relief likewise will extend the associated relief provided in Announcement 2017-4[5] regarding Internal Revenue Code section 4975 excise taxes and related reporting obligations.[6]

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### **endnotes**

[1] The text of the final delay is available here: <https://www.federalregister.gov/documents/2017/11/29/2017-25760/18-month-extension-of-transition-period-and-delay-of-applicability-dates-best-interest-contract>.

[2] See ICI Memorandum No. 30855, dated August 30, 2017. *Available at* [https://www.ici.org/my\\_ici/memorandum/memo30855](https://www.ici.org/my_ici/memorandum/memo30855).

[3] See White House memorandum to the Secretary of Labor, dated February 3, 2017 and published at 82 Fed. Reg. 9675 (February 7, 2017), *available at* <https://www.gpo.gov/fdsys/pkg/FR-2017-02-07/pdf/2017-02656.pdf>.

[4] See ICI Memorandum No. 30716, dated May 24, 2017. *Available at* [https://www.ici.org/my\\_ici/memorandum/memo30716](https://www.ici.org/my_ici/memorandum/memo30716).

[5] See ICI Memorandum No. 30657, dated March 30, 2017. *Available at* [https://www.ici.org/my\\_ici/memorandum/memo30657](https://www.ici.org/my_ici/memorandum/memo30657).

[6] See footnote 37 of preamble.