

August 10, 2017

Department of Labor to Propose 18-Month Delay in Applicability Date for Portions of Fiduciary Rule

On August 9, 2017, the U.S. Department of Labor (the “DOL”) filed a notice in connection with pending litigation that revealed a portion of its current plans for the fiduciary rule. In the filing, the DOL stated that it has submitted to the Office of Management and Budget (OMB) proposed amendments to the Best Interest Contract Exemption and other exemptions that would effectively delay the applicability date of many of the requirements for fiduciaries to comply with the fiduciary rule until July 1, 2019. If the proposed amendments emerge from the OMB review process unchanged, then this would permit financial institutions to maintain their transition-period compliance practices for the time being, without an immediate need to move forward with resource-intensive plans to comply with the documentary, disclosure, and technological requirements included in the full BIC exemption. If the applicability date for the full requirements under the exemptions is not delayed, then full compliance would be required by January 1, 2018, which would require institutions to devote significant resources to their further compliance efforts in the near term. It is unclear whether the DOL’s moratorium on enforcement efforts will be extended during this additional 18-month period. Ropes & Gray will continue to monitor any developments regarding the fiduciary rule, including this proposed delay.

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Earlier this month, the DOL issued additional FAQs on the fiduciary rule, which clarified (among other things) that financial institutions and advisers that do not reasonably expect to be fiduciaries under the rule do not need to provide so called “408(b)(2)” fee disclosures to their plan or IRA clients and that, if such institutions or advisers are uncertain of their status under the rule, then they may satisfy these disclosure obligations without expressly acknowledging fiduciary status.

For details on the requirements of the fiduciary rule, see our prior [Alert on Key Considerations for Asset Managers](#). Further information on the rule can be found in our [Alert on the Final Rule](#) and our [Alert on the Final Delay](#), and for details on the DOL FAQs, see our prior [Alert on the First FAQ](#), [Alert on the Second FAQ](#), and [Alert on the Transition Period FAQs](#).

If you would like to discuss the impact that the fiduciary rule may have on any aspect of your business, or if you have any other questions on the rule, please feel free to reach out to any of the attorneys listed above.