

September 1, 2017

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

On August 31, 2017, the U.S. Department of Labor (the “DOL”) published proposed amendments to the Best Interest Contract Exemption and other exemptions that would delay the applicability date of many of the requirements for fiduciaries to comply with the fiduciary rule from January 1, 2018 until July 1, 2019. In the release, the DOL stated that the delay is primarily intended to give it more time to consider possible changes or alternatives to the rule and exemptions, and to coordinate with the SEC on any changes. The proposal also indicates that the DOL plans to release, in the near future, a new, “more streamlined” exemption based on new developments in the financial services industry. Comments are requested on the length and format of the delay (comments are due within 15 days of publication).

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The DOL also released a new Field Assistance Bulletin (2017-03) outlining a non-enforcement policy for fiduciaries who rely on the BIC exemption and related exemptions but who require IRA owners to waive their right to bring or participate in a class action or other representative action in court. Notably, this non-enforcement policy does not alter or limit any other rights of action that IRA owners may have, including (as the DOL emphasizes) individual rights to enforce contractual provisions under state law.

Taken together, these releases from the DOL should give financial institutions that are currently relying on the BIC exemption greater certainty about their compliance obligations while the DOL works to revise the long-term requirements for relief. These releases may also make the BIC exemption more attractive to institutions that were considering making use of it but that were concerned about additional costs and compliance efforts following the end of the year.

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 about the rule, please feel free to reach out to any of the attorneys listed above.