

May 7, 2018

## Department of Labor Announces New Enforcement Policy Following Fifth Circuit's Fiduciary Rule Decision

On May 7, 2018, the U.S. Department of Labor (the "DOL") announced a new temporary enforcement policy in anticipation of the Fifth Circuit Court of Appeals issuing a mandate to vacate the DOL's fiduciary rule. Field Assistance Bulletin 2018-02 (the "FAB") is intended to address the "uncertainty about fiduciary obligations and the scope of exemptive relief" following the Fifth Circuit's actions, by providing that financial institutions may continue to rely on the temporary enforcement relief policy that the DOL adopted under Field Assistance Bulletin 2017-02. As a result, the DOL will not pursue claims against fiduciaries who are working diligently and in good faith to comply with the impartial conduct standards for transactions that would have been exempted under the BIC Exemption or Principal Transactions Exemption, or treat such fiduciaries as violating the applicable prohibited transaction rules, even following the Fifth Circuit's mandate to vacate those exemptions. In addition, the DOL acknowledged that "some financial institutions have devoted significant resources to comply with the BIC Exemption and the Principal Transactions Exemption and may prefer to continue to rely upon the new compliance structures," and it extended this transition relief to future reliance on those exemptions by institutions pending further guidance. The FAB also confirms that the Treasury Department and the IRS will follow a similar non-enforcement policy.

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The FAB raises important questions regarding the future of the DOL's fiduciary definition, including whether new exemptions may be created to mirror the relief provided under the BIC Exemption and other exemptions/carve-outs that were included in the fiduciary rule and what (if any) further transition relief will be provided to fiduciaries. We will continue to monitor developments in this area, will issue further alerts as new guidance is released.

For details on the Fifth Circuit Court's decision on the fiduciary rule, please see our prior [Alert](#). Further information on the rule and the transition period requirements can be found in our [Alert on the Final Rule](#) and our [Alert on the Transition Period FAQs](#).

If you would like to discuss the impact that the DOL's guidance 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.