March 13, 2017

Department of Labor Adopts Temporary Non-Enforcement Policy for Fiduciary Rule

On March 10, 2017, the U.S. Department of Labor (the "DOL") issued Field Assistance Bulletin No. 2017-01, announcing a temporary non-enforcement policy for non-compliance with its fiduciary rule. The non-enforcement policy would apply in two circumstances:

1. If the DOL's proposed delay is not finalized until after April 10, the current applicability date for the fiduciary rule, then the DOL will not initiate enforcement actions based on any failure to comply with the rule between April 10 and the date the delay is implemented.

2. If the DOL does not implement a final delay, then it will not initiate enforcement actions based on noncompliance with the rule and the prohibited transaction exemptions issued alongside the rule, if steps are taken to satisfy the requirements within a reasonable time period after the DOL announces that there will not be a delay.

The non-enforcement policy should provide some comfort to financial institutions that are having difficulty completing preparations for the April 10 compliance date. However, it does not protect institutions from private lawsuits for failure to comply with the rule. In addition, the policy does not eliminate the need to continue working on compliance programs, since the potential relief if the rule is not delayed requires an institution to come into compliance within a "reasonable time period."

For details on the fiduciary rule, see our Alert; for details on the DOL FAQs, see our Alert on the First FAQ and Alert on the Second FAQ; and for information on the current status of the rule see our Alert on the Presidential Memorandum and Alert on the DOL's Proposed 60-day Delay.

If you would like further information, any member of Ropes & Gray's ERISA practice group would be happy to discuss the current status of the DOL's fiduciary rule with you.