

IMPLEMENTATION OF PORTIONS OF DOL FIDUCIARY RULE FURTHER DELAYED

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As most people are aware, the Department of Labor's ("DOL") final rules defining fiduciary investment advice with respect to retirement accounts became applicable on June 9, 2017. At that time, the DOL also issued guidance that postponed the applicability of certain provisions until January 1, 2018. Since then, the DOL has undertaken a review of certain portions of the fiduciary rule. This is in part because the Securities and Exchange Commission has indicated that it wishes to provide for its own fiduciary rule. As a result, the DOL has further extended the applicability date of certain of the requirements found in the fiduciary rules. Specifically, certain requirements are delayed until July 1, 2019 as follows:

- Compliance with the written agreement provisions of the Best Interest Contract Exemption (BIC Exemption), including written contracts with IRA account holders.
- Amendments to Prohibited Transaction Exemption 84-24 that generally would require advisors who sell variable annuities and indexed annuities to satisfy the BIC Exemption.
- The compliance with the written agreement provisions of the Principal Transaction Exemption.

The DOL also announced that it will continue to apply a good faith standard with respect to compliance through July 1, 2019. It should be noted that the final rules issued by the DOL have not delayed the basic requirement that expanded the definition of who is a fiduciary with respect to ERISA and IRA accounts. We can expect that prior to the expiration of this delayed effective date, rules will be proposed by the Securities and Exchange Commission, perhaps in coordination with DOL, and a final set of complete rules will become applicable.

18-Month Extension of Transition Period and Delay of Applicability Dates; Best Interest Contract Exemption (PTE 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016-02); Prohibited Transaction Exemption 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters (PTE 84-24) <https://www.gpo.gov/fdsys/pkg/FR-2017-11-29/pdf/2017-25760.pdf>; *Field Assistance Bulletin No. 2017-02* <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance->

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