DOL Extends Fiduciary Rule Effective Date for 60 Days

By Douglas J. Ellis / Apr 12, 2017

On April 4, 2017, the Department of Labor's Employee Benefits Security Administration ("EBSA") issued a final rule extending the effective date of the DOL's fiduciary rule by 60 days, meaning the new effective date is June 9, 2017. As described in a prior e-alert (see Department of Labor Issues Final ERISA Fiduciary and Conflict of Interest Regulations), the fiduciary rule issued by the DOL under President Obama in April 2016 generally expands the definition of who acts as a "fiduciary" under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code, and imposes greater disclosure and impartial conduct requirements on such fiduciaries who provide investment advice to retirement plans and arrangements, including IRAs.

The new final rule also extends by 60 days the effective date of certain prohibited transaction class exemptions that were issued in connection with the new fiduciary rule, and delays the effective date of certain amendments to existing prohibited transaction exemptions that will be affected by the new rule. In addition to extending the effective date of the Best Interest Contract Exemption, or BICE, EBSA provided that fiduciaries relying on the BICE exemption from June 9, 2017 through the end of 2017 will be required only to comply with the impartial conduct standards of the exemption - which require fiduciaries to focus on the "best interest" of clients, charge only reasonable compensation, and not make any materially misleading statements. The other requirements of the exemption, including entering into a written contract, providing representations and commitments about fiduciary compliance, and establishing policies and procedures to mitigate conflicts of interest, will not be enforced until January 1, 2018.

While the extension generally maintains the status quo until June 9, 2017, it is expected that EBSA will continue reviewing the fiduciary rule and its impact on investment advisers and retirement plans and arrangements, and additional delays or changes could be coming.

If you have any questions about the extension of the fiduciary rule effective date, or the impact of the fiduciary rule itself, please contact Doug Ellis at dellis@clarkhill.com | (412) 394-2367; Nancy Farnam at nfarnam@clarkhill.com | (248) 530-6222; Ed Hammond at ehammond@clarkhill.com | (248) 988-1821; or another member of Clark Hill's Labor and Employment Practice Group.

