ĒkonBenefits
YOUR TRUSTED PARTNER

Fiduciary Rule Now Effective…sort of

The bumpy road to the Fiduciary Rule

We may not have reached our final destination on the bumpy road to the Fiduciary Rule, but with certain aspects effective as of June 9, 2017, our current course is clearly in sight. The date for the new Fiduciary Rule applicability is finally here after months of postponement. What important dates should you be aware of and are further changes coming on the road ahead?

Background

The Conflict of Interest / Fiduciary Rule was designed under the Obama administration to protect retirement plan investors from conflicts of interest. In short, the Rule, which was finalized in April of 2016, requires any adviser who provides financial recommendations to a retirement account to act as a fiduciary, operating solely in the client's best interest. Prior to the Rule, some advisers were able to work under a suitability standard which simply required that their recommendations be suitable to the client's needs. In some situations, this has resulted in conflicts of interest where the adviser's bottom line is put ahead of the client's best interest.

Following President Donald Trump's February 3rd Presidential Memorandum[1], the Department of Labor (DOL) was ordered to review the impact of the Rule. The DOL, being understaffed, did not have the resources to do a full review and delayed the applicability of the Rule.

Applicability Dates

The DOL provided for a two stage implementation. Part one, applicable on June 9, 2017, implements the Rule's fiduciary standard. As of the 9th, anyone who provides investment advice for a fee or other compensation will be a fiduciary who must act in their client's best interest.

Part two of the Rule, including many operational requirements, will become applicable in January providing a transition period for compliance from June 9 – December 31, 2017. Advisors acting under a prohibited transaction exemption including the Best Interest Contract Exemption, will therefore become investment fiduciaries effective June 9th, but only need to act according to the "impartial conduct standards" as outlined in the exemption until December 31 at which time, the full Rule would be effective and all the requirements of the exemption must be met. The "impartial conduct standards" state that the fiduciary must act in their clients' best interest following ERISA's prudence requirements, accept only reasonable compensation, and make no misleading statements[2].

---

[1] Trump, Donald J. Presidential Memorandum on Fiduciary Duty Rule. Memorandum for the Secretary of Labor. Office of the Press Secretary. The White House. 03 February 2017.

[2] Ferenczy Benefits Law Center. "Flashpoint – June 9th Is The Date For Fiduciary Rule Applicability.... For Now." 26 May 2017, ferenczylaw.com/flashpoint-june-9th-is-the-date-for-fiduciary-rule-applicability-for-now/.

The Final Destination?

The ride to the Fiduciary Rule has been long and turbulent and isn't over yet. The DOL will continue to evaluate the Rule based on President Donald Trump's February order. The Wall Street Journal reported that Labor Secretary Alexander Acosta "said this past week that the administration had taken its 'first step' to decide the rule's fate, with the Office of Management and Budget requesting information on the rule. The OMB is the gatekeeper in the rule-making – and rule-changing – process."[3] We might see further changes to the Rule's provisions or even unwinding of the Rule in the coming months as more top officials are named. Hold tight, the ride's not over and surely more news is to come.

---

[3] Hayashi, Yuka. "Fiduciary Rule Goes Into Effect To Foe's Chagrin." *Wall Street Journal* 12 June 2017: B8. Print.