Fi360

THREE EXEMPTIONS UNDER THE FIDUCIARY RULE THAT COULD BE DELAYED

AND PARTS OF THE FIDUCIARY RULE THAT WON'T

On Thursday, Nov. 2, the Office of Management and Budget (OMB) posted a submission from the Department of Labor (DOL) on its website that would **delay the compliance deadline for certain Prohibited Transaction Exemptions** under the DOL's fiduciary rule **from Jan. 1, 2018, to July 1, 2019.** OMB is required to review economically significant rules that federal agencies propose for public comment.

The three exemptions that would be delayed from full implementation under the fiduciary rule, other than the Impartial Conduct Standards, are various disclosure and other requirements for the Best Interest Contract Exemption (BICE); the class exemption for principal transactions, and inclusion of variable and indexed annuity transactions under BICE. Given the Trump Administration's executive order mandating a thorough review of the rule, we believe it likely that OMB will expedite its review and approve the DOL's request within a few weeks. The DOL, in turn, is then expected to quickly adopt the compliance extension. Of course, DOL must take final action by the end of the year to avoid implementation of the full rule.

As you are probably aware, major elements of the DOL fiduciary rule have been applicable to retirement advice since June 9, 2017. Advisors who meet the greatly expanded definition of an ERISA 3(21) fiduciary that went into effect on June 9 must meet the Department's Impartial Conduct Standards when providing conflicted investment advice, meaning receipt of commissions or other variable compensation. The Impartial Conduct Standards require fiduciary advisors and their firms to act in the clients' best interests, charge no more than reasonable compensation and avoid misleading statements.

For example, since June 9 the only requirements necessary to meet the BICE safe harbor are the Impartial Conduct Standards. However, without action by the Department, the contract requirement, fiduciary warranty, and other written disclosures under BICE would have gone into effect Jan. 1.

Following formal approval of the extension by the DOL, the agency is expected to proceed with its review of changes to the fiduciary rule. The Senate is likely to confirm Preston Rutledge as the new assistant secretary for the Employee Benefits Security Administration soon, which we believe will expedite staff review over the next 18 months. The EBSA, which is part of the DOL and oversees regulation of employee benefit plans, is also expected to coordinate any rule changes with the Securities and Exchange Commission. Two legal challenges to the rule remain pending, which could change the dynamics described above if one or both courts agree with industry plaintiffs.

We will continue to update you as these events unfold.