Under President Trump's Direction DOL Moves to Delay Fiduciary Rule

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The Department of Labor (DOL) announced today that it is moving forward, under the direction of President Trump, with its efforts to delay the applicability date of the new fiduciary rule, which was designed to require all financial advisors providing investment advice regarding retirement savings to act in the best interest of their clients. The DOL, in its proposed rule delay, which will likely be published on March 2, 2017 in the *Federal Register*, seeks a 60-day delay of the fiduciary rule, currently set to start on April 10, 2017. The proposed 60-day rule delay is also a new rule and will have a short 15-day public comment period ending on March 17, 2017. This action is in direct response to a February 3, 2017 memorandum by President Trump, directing the DOL "to examine the Fiduciary Duty Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice." Furthermore, the memo directs the DOL to "prepare an undated economic and legal analysis concerning the likely impact of the Fiduciary Duty Rule." Ultimately, President Trump's memo also directs the DOL to move forward with "rescinding or revising the Rule" after undergoing the proper reviews and rule making procedures.

So where does the DOL's new proposal leave the rule? Well, according to fiduciary expert Peter Gulia, whose Fiduciary Guidance Counsel law firm advises retirement plan fiduciaries and investment advisers, "the *proposed* rule – if adopted, published, made effective, and not enjoined – would extend the applicability date of the 2016 investment-advice fiduciary rule from April 10 to June 9, 2017. It would likewise extend the expiration date of the 1975 investment-advice fiduciary rule. The proposed rule would extend the availability date of the Best Interest Contract Exemption from April 10 to June 9, 2017. Likewise, relevant dates for other new and revised exemptions published on April 8, 2016 would change to June 9, 2017." However, Mr. Gulia also notes that the DOL is on a tight deadline to get a final rule published before the April 10 "compliance" date. The DOL needs to read and analyze all of the comments on the proposed rule delay within two or so weeks in order to have the new rule delaying the current rule published by early April.

So why is this important? Simply put, the DOL fiduciary rule was designed to make sure that, if you hire a financial advisor to help with your retirement planning and assets, the financial advisor acts in your best interest, avoids conflicts of interest when possible, and is transparent with you about his or her compensation and fees. Many people are surprised to learn that such a rule does not already exist for financial advisors since financial advice, at its core, would appear only to be needed precisely to ensure the best interests of the consumer. While the fiduciary rule was not supported by everyone in the financial services industry, it has been hailed as a workable rule that is a step in the right direction for financial services, and the delay in implementation is expected to be the first step in terminating the rule as it exists today. The delay of the rule, and potential revision or rescinding of the fiduciary rule, is an overt attempt to protect the status quo of financial advice in the United States.

The fiduciary rule, which is set to go live in April, has been debated and in the works for approximately seven years. Even after all that time, many financial advisors remain split on the current rule, with some pushing the benefits of having a more uniform fiduciary standard across the board and others saying it will harm consumers by raising the cost of receiving financial advice. The reality is that the rule is a bit of both. A best interest standard is needed for financial advice, and really, no one disagrees with that point. However, many advisors and financial service professionals contend that the current rule pushes out low and middle income Americans by making the use of commission based accounts and products harder to use as a financial advisor. Furthermore, the fiduciary rule would open up liability for financial service firms and advisors, potentially increasing overhead and costs associated with providing advice, which would likely be passed down to consumers over time.

It appears, with a new Administration pushing against the rule, the status quo and no expanded fiduciary rule might be the most likely outcome. As such, the version of the fiduciary rule set to go live in April will likely never see the light of day. However, the DOL still has a lot of work to do in order to delay the rule and then to suspend or revise the rule. This leaves many Americans and the financial service industry in limbo. So stay tuned for further updates on the fiduciary rule, as changes and developments will likely continue far past April.

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