DOL Delays Fiduciary Rule Implementation; Reduces Transition Compliance

By Jane Meacham, Contributing Editor

The Department of Labor (DOL) on April 4 released details of a 60-day delay in implementation of its new fiduciary rule and Best Interest Contract Exemption (BICE). The rule formalizing the extension, was published in the *Federal Register* on April 7, also delivered changes that significantly reduce compliance burdens during a transition period until January 1, 2018, when an amended BICE is expected to be in full effect.

The approach taken by the new rule eliminates the need for transition agreements, disclosures, and some changes that were formally required to be in place by the fiduciary rule's original applicability date of April 10. It was seen as providing short-term relief to plan sponsors and other retirement plan administrators while the fiduciary rule is being reviewed by the DOL.

Required representations of fiduciary compliance and related written disclosures also are now delayed until January 1, 2018, as a result of the new rule, a move that limits plan and adviser liability for the time being.

Delay for Reviewing Rule

The delay to June 9, first proposed in early March (see March story), allows study on the impact of the fiduciary rule and related exemptions that was called for February 3 by President Trump in a presidential memorandum. Further delays by the DOL could follow this one.

The DOL also said the postponement of BICE enactment until the start of 2018 means covered transactions will be regulated by the less rigorous Impartial Conduct Standards as of June 9. Compliance with Impartial Conduct Standards is also sufficient between June 9 to January 1, 2018, for the Class Exemption for Principal Transactions or Prohibited Transaction Exemption 84-24.

These standards require that advice given must be in retirement investors' best interest, compensation must be reasonable, and prohibit institutions and advisers from giving misleading statements to investors. The agency said the standards would protect plans and retirement investors effectively during the transition period.

Other key provisions of the DOL rule delaying the start of the fiduciary rule included:

- The applicability date of the DOL fiduciary rule is extended from April 10 to June 9, 2107;
- Changes to other preexisting class exemptions amended by the DOL in connection with the fiduciary rule are applicable and in effect on June 9; *and*
- The DOL expects to complete the mandated study of the fiduciary rule and related exemptions and announce resulting actions, if any, no later than "and hopefully well in advance of" January 1, 2018.

Although the final presidential memorandum did not specify a duration for the rule's delay, it could have been suspended for as long as 180 days in the request. Trump, in the memorandum, directed the DOL to reassess the rule and modify or replace it, if it is determined to cause harm to investors or companies. The Trump administration and Republican-controlled Congress had criticized the DOL fiduciary rule during the election season in 2016, although no specifics about their party's plans for the rule were spelled out.

Thousands of Comments Submitted

The DOL is continuing to accept public comments about issues raised in the presidential memorandum delaying the fiduciary rule until April 17. It received nearly 200,000 comments on the proposed delay in a 15-day comment period in March.

The DOL said many commenters expressed the hope that the agency would not be "forced to grant a series of short extensions, which would produce serious frictional costs, protracted uncertainty (for advisers, financial institutions, and retirement investors), wasted expenses on interim and conditional compliance efforts, and unnecessary market disruption."

It said many also requested that any delay of the rule's applicability date, regardless of its length, be accompanied by a commensurate adjustment in the periods of transition relief available under the BICE and the Principal Transactions Exemption.

The financial services industry contends the rule is too complex and expensive to comply with, and argues that the rule broadening the definition of a fiduciary will discriminate against lower-asset investors seeking financial guidance.

But many retirement plan sponsors and their third-party administrations had taken steps to be ready for the rule's original April 10 applicability date, leading retirement plan industry representatives to suggest that at least some of rule's dictates attempting to protect consumers against conflicted investment advice will remain in some form.