DOL provides “significant relief” on fiduciary rule: Wagner Law Group

By Editorial Staff *Wed, Apr 5, 2017*

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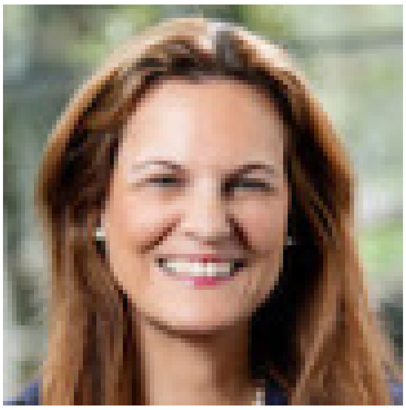

On Tuesday, April 4, the Wagner Law Group, headed by ERISA expert Marcia Wagner (left), issued the following report on the Trump administration’s actions on the Obama-era fiduciary rule:

The U.S. Department of Labor’s (DOL) proposed 60-day delay to the new fiduciary rule defining investment advice (Fiduciary Rule), the Best Interest Contract Exemption (BICE), and other related exemptions was finalized today.

The final rule codifying the delay will appear in the Federal Register on Friday, April 7, 2017 and take effect on Monday, April 10, 2017. This completes the delay process initiated by the February 3, 2017, Presidential Memorandum directing the DOL to study the impact of the Fiduciary Rule and the related exemptions.

The final rule is not a simple 60-day delay across the board. Rather, it significantly reduces the compliance burden of the Fiduciary Rule and the related exemptions during the transition period between the applicability date (formerly, April 10, now June 9, 2017) and January 1, 2018. As set out by the DOL, the final rule has the following components:

- The “applicability date” of the Fiduciary Rule is extended for 60 days, from April 10 to June 9, 2017;
- The applicability date of all of the new and amended exemptions is extended for 60 days, from April 10 to June 9, 2017;
- From June 9, 2017 to January 1, 2018, anyone wishing to use the BICE, the Class Exemption for Principal Transactions or Prohibited Transaction Exemption 84-24, need only comply with the Impartial Conduct Standards (best interest standard of care, reasonable compensation and not making any materially misleading statements). Compliance with all other conditions of these exemptions, including written disclosures and representations, are waived until January 1, 2018;
- Changes to other preexisting class exemptions amended by the DOL in connection with the Fiduciary Rule (Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, and 86-128) are applicable and in full effect on June 9, 2017; and

- The DOL will complete the mandated study of the Fiduciary Rule and the related exemptions and announce what actions, if any, will be taken as a result of the study, not later than (and hopefully well in advance of) January 1, 2018.

In sum, the DOL’s approach incorporates a 60-day delay of the applicability date of the Fiduciary Rule and related exemptions and a significant reduction in compliance burdens during the new transition period, i.e., the period from the June 9, 2017 applicability date to January 1, 2018, when the presumably amended BICE, the Exemption for Principal Transactions, and Prohibited Transaction Exemption 84-24 will be in full effect.

This approach essentially eliminates the need for transition agreements, disclosures, and certain structural changes (such as the appointment of a BICE officer) that were formerly required to be in place on the applicability date.

This should provide significant relief and appears to be an attempt to respond to widespread concerns about potential client confusion. The DOL stated that making the Impartial Conduct Standards effective on June 9, 2017, provides significant protection to retirement plans and retirement investors.

The DOL said it would continue to accept comments regarding the issues raised in the Presidential Memorandum. We are continuing to study the final rule announcing the delay.