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## Presidential Memorandum on Fiduciary Rule: Interesting Angles on the DOL's Fiduciary Rule #35

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Wednesday, February 8, 2017

Last Friday, the White House directed a memorandum to the DOL to review the fiduciary regulation and the related exemptions (the "fiduciary rules").

This article discusses what the memo did and did not do, and what the next steps are.

As a legal matter, the memo was more "show" than "go," in the sense that it did not delay, withdraw or modify the fiduciary rules. Instead, it directed the DOL to evaluate the rules and to determine if they should become applicable, be modified or be withdrawn.

Shortly after the memo was signed, the Acting Secretary of Labor said that the Department would look into possible legal actions to delay the application of the rule. While that clearly indicates a desire to delay the applicability date beyond April 10th, it also suggests that the DOL has not decided if there is a legal maneuver that could accomplish that result. On the other hand, it could just be government-speak indicating that a delaying action will be coming in the next few days. Either way, I'm a little surprised that the action wasn't taken immediately.

If it is delayed, that leaves us with the questions of (1) what rules apply now, and (2) will the rules be withdrawn or modified (and, if modified, how)?

The answer to the first question is easy . . . the "old" fiduciary rules are in effect until something is done. The second question is not easily answered. There is a split of opinion about whether the DOL will kill or modify the rules. At this point, we need to wait and see.

*The views expressed in this article are the views of Fred Reish, and do not necessarily reflect the views of Drinker Biddle & Reath.*

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