Thursday, March 2, 2017

The Department of Labor ("DOL") has issued a proposed rule (the "Proposed Rule") that would delay for 60 days (the “60-Day Delay”) the April 10, 2017 applicability date of the DOL’s new fiduciary rule (the “Fiduciary Rule”). Given the potential change in the applicability date, financial services institutions will need to determine if they will continue their work toward implementation of the Fiduciary Rule or if they will delay their efforts.

The Proposed Rule provides for a 15-day comment period on the proposed 60-Day Delay and then a 45-day comment period regarding the examination to be conducted by the DOL, as described below. The 60-Day Delay would become effective on the date that the final version of the Proposed Rule is published in the Federal Register. Therefore, at this time, the date on which the 60-Day Delay would end is uncertain.

The 60-Day Delay is in response to President Trump’s February 3, 2017 directive to the DOL to examine whether the Fiduciary Rule “may adversely affect the ability of Americans to gain access to retirement information”. The President further directed the DOL to examine whether:

- The Fiduciary Rule has harmed investors due to a reduction in the availability
of retirement savings offerings or financial advice;

- The anticipated April 10 applicability date has caused disruptions in the retirement services industry that may adversely affect investors or retirees; and

- The Fiduciary Rule is likely to cause an increase in litigation and in the prices that investors must pay to gain access to retirement services.

Based on the outcome of the examination, the DOL may have to rescind or revise the Fiduciary Rule. If the DOL concludes that the Fiduciary Rule will harm investors in one of the ways described above or is inconsistent with the priority of the Administration to empower Americans to make their own financial decisions, to save for retirement and to withstand unexpected financial emergencies, the Administration has directed the DOL to either rescind or revise the Fiduciary Rule.

The DOL states that it is proposing the 60-Day Delay because the time remaining until April 10 may not be sufficient for the DOL to complete the examination required by the President’s directive. The DOL further explains that, if the Fiduciary Rule is rescinded or revised, the 60-Day Delay would mitigate disruption for retirement investors and financial advisers, as they would have to face one, rather than two, major changes in the regulatory environment.

**Considerations for Financial Institutions**

The 60-Day Delay requires financial institutions to decide if they are going to continue to work toward implementation of the changes necessary to comply with the Fiduciary Rule or if they will delay their efforts, pending the outcome of the DOL’s examination. Either approach carries some risks. Financial institutions that continue work related to implementation may have to revise some of the changes that they have implemented if the DOL revises the Fiduciary Rule. Financial institutions that delay work on implementing the Fiduciary Rule may find themselves scrambling to meet the new applicability date once it is known. With either approach, if the DOL rescinds the Fiduciary Rule, financial institutions will need to determine the extent to which they will maintain the changes that they have implemented or are in the process of implementing.

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