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## The ERISA Fiduciary Advice Rule: What Happens on June 9?

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This is an update on the upcoming effective date of the "fiduciary rule" or "fiduciary advice rule" (the "Rule") that was issued under the US Employee Retirement Income Security Act of 1974 (ERISA). The Rule was published by the US Department of Labor (DOL) in April, 2016. The purpose of the Rule is to cause a person or entity to become a "fiduciary" under ERISA and the US Internal Revenue Code of 1986 (the "Code") as a result of giving of certain types of advice involving investment of assets of employee benefit plans, such as 401(k) or pension plans, or of individual retirement accounts (IRAs) and receiving compensation for that advice.

The Rule was originally intended to become effective April 10, but in April the DOL extended (the "Extension Notice") the effective date of the Rule for 60 days (until June 9), and provided for reduced compliance obligations under the Rule from that date through the end of 2017 (the "Transition Period"). The effective date for Prohibited Transaction Exemptions (PTEs), both new and amended, that are related to the Rule also was extended until June 9, and further transitional relief was provided with respect to certain of those PTEs.

In a May 23 Op Ed in the Wall Street Journal, Labor Secretary Acosta announced that the Rule would go into effect on June 9, as provided for in the Extension Notice, and that the DOL would seek additional public comment on possible revisions to the Rule. He indicated that the DOL "found no principled legal basis to change the June 9 date while we seek public input." The DOL also published, on May 23, FAQs on implementation of the Rule and an update of its previously-issued enforcement policy for the Transition Period. Therefore, it is important to review the rules that will go into effect on June 9.

Under the Rule, fiduciary status is triggered by investment "recommendations." It provides, in general, that if a person (1) provides certain types of recommendations to a plan or its participants and/or beneficiaries, or to an IRA owner (collectively, "Protected Investors"); and (2) as a result, receives a fee or other compensation (direct or indirect), then that person is providing "investment advice for a fee" and therefore, in giving such advice, is a fiduciary to the Protected Investor. Receipt of compensation tied to such recommendations by a person or entity that is a fiduciary could result in prohibited transactions under ERISA and the Code. Under the Extension Notice, the DOL provided simplified compliance requirements under the Rule for the Transition Period.

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