NEAL GERBER EISENBERG

Publication

07/27/2018

Client Alert: President Trump Issues Memorandum on Fiduciary Rule Likely Leading to Delayed Compliance Date

On February 3, 2017, President Trump issued a memorandum directing the Department of Labor to prepare an updated economic and legal analysis of its "Fiduciary Rule." Compliance with the Fiduciary Rule is generally required on April 10, 2017, but the effect of the presidential memorandum will likely be a delay in the compliance date. Many news reports have referenced a 180-day delay, but no specific delay was stated in the memorandum.

The Fiduciary Rule requires that individuals and firms act as fiduciaries when they are paid to advise individuals with respect to their retirement savings. This means that such advisors must act in the best interests of their customers and avoid conflicts of interest. The guidance issued by the DOL was finalized in April 2016, after more than five years of discussion with the retirement industry, retiree groups and others. The retirement industry has generally been working toward compliance with the Fiduciary Rule for a number of months, and as a result, some firms may choose to implement at least some of the changes they have made.

During the coming months, any number of developments could occur. Congress could vote to repeal the Fiduciary Rule. While the House of Representatives would likely support such action, the Senate may not be as willing to repeal. Another

CLIENT SERVICES

Labor & Employment
Employee Benefits & Executive Compensation
Fund Formation & Investment Management

RELATED PEOPLE

Jeffrey J. Bakker
Patricia S. Cain

possibility is the DOL may rescind or revise the Fiduciary Rule. However, any revision would almost certainly take more than six months if the prior history of the Fiduciary Rule is any indication. If the Fiduciary Rule is not rescinded altogether, a further delay in its implementation may be announced in the fall.

It is important to note that the Fiduciary Rule does not impact anyone who is currently a fiduciary of an employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). This means that fiduciaries of 401(k) plans, defined benefit plans and other retirement plans must continue to adhere to the fiduciary standards of ERISA. Lawsuits against plan fiduciaries who allegedly have failed to meet their obligations under ERISA are likely to continue at the high pace we have seen over the last several years.