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EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

IMPLEMENTATION OF DOL BENEFIT PLAN FIDUCIARY RULES TO PROCEED

On April 8, 2016, the U.S. Department of Labor issued new regulations intended to expand the list of activities that would render a person a “fiduciary” providing investment advice to a benefit plan (see our LEGALcurrents dated April 29, 2016; <http://www.hsela.com/news-and-information/legalcurrents/962-new-fiduciary-standards-for-erisa-plans>). The regulations originally were scheduled to take effect April 10, 2017, with full compliance delayed on a number of requirements imposed by accompanying guidance until January 1, 2018. However, the Trump Administration issued an Executive Order requiring the Department to reconsider whether the new regulations might adversely affect access to retirement information and financial advice, as well as to prepare an updated economic and legal analysis of the regulations. In light of that order, the Department delayed the initial April 10, 2017 effective date to June 9, 2017. There was speculation that the Department might further delay implementation, or begin efforts to revoke or significantly revamp the regulations and accompanying guidance.

The Department has now confirmed that the regulatory provisions originally scheduled for April 10, 2017 will take effect on the June 9, 2017 extended effective date (at 11:59 p.m. local time that day), with some adjustments to the timing and applicability of rules relating to insurance transactions. As before, full compliance with some aspects of the accompanying guidance is not required until January 1, 2018. Although the Department has said it will continue to review potential ways to reduce administrative burdens and costs associated with the rule, and that it may extend the January 1, 2018 deadline for at least some purposes, plan fiduciaries and service providers should plan on complying with the regulations by June 9, 2017 and work towards a January 1, 2018 deadline for full compliance.

In keeping with the overall efforts to have a smooth transition, the Department has said that through the end of the year, it “will not pursue claims against fiduciaries who are working diligently and in good faith to comply with the fiduciary duty rule and exemptions, or treat those fiduciaries as being in violation of the fiduciary duty rule and exemptions.” The IRS has confirmed it will abide by this approach with respect to prohibited transaction excise taxes as well.

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Given this standard, it's important for plan fiduciaries to reach out to their providers to confirm that those providers have taken the necessary steps to come into good faith compliance by June 9, 2017 and achieve full compliance by January 1, 2018.

If you have questions please feel free to contact any member of the Employee Benefits & Executive Compensation group at (585) 232-6500.

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