

Client Update

Trump Orders Review of DOL Fiduciary Rule; DOL to Consider Delay

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On February 3, 2017, President Trump issued a memorandum to the Department of Labor directing it to re-examine its fiduciary “investment advice” rule (the “Rule”) and to take action to repeal or revise the Rule if the DOL concludes that the Rule will have impacts that are more adverse than previously contemplated under the Obama administration.¹ Unlike earlier draft versions of the memorandum, the final version of the memorandum does not expressly direct the DOL to delay the Rule’s April 10, 2017 effective date, but the DOL responded to the President’s memorandum by announcing that it “will now consider its legal options to delay the applicability date [of the Rule] as we comply with the President’s memorandum,” and so a delay of the Rule’s current effective date seems inevitable.

It should be expected that the DOL will reopen the record to a closer (and more sympathetic) review of the burdens that the Rule places on the financial industry, and of the question of whether the Rule might actually harm retirement investors by denying them access to valuable education materials. Whether this review of the record will lead to a softening of the more challenging aspects of the Rule, or to full repeal, or conceivably (but not likely) to the Rule becoming effective in its current form, is uncertain. Nevertheless, it would be prudent for private equity funds and hedge funds that may be affected by the Rule to continue to develop their thinking on methods of compliance until the landscape becomes clearer.

¹ Pursuant to the memorandum, the DOL must take action to repeal or revise the Rule if, after performing a new analysis, it concludes that the Rule (i) will reduce access to certain retirement savings products, information or advice; (ii) has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees; (iii) is likely to cause an increase in litigation or an increase in the prices of retirement services; or (iv) is otherwise inconsistent with the President’s stated priority of “allowing Americans to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses.”

We will keep you informed of developments as they occur.

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Please do not hesitate to contact us with any questions.