

RETIREMENT ADVISOR COUNCIL

Wednesday, March 15, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Fiduciary Rule Examination
Room N-5655
US Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Ref: RIN 1210-AB79

Dear Sir or Madam:

The Retirement Advisor Council (“The Council”) is grateful for the opportunity to comment on the Department of Labor’s proposed rule extending the applicability date of the regulation defining who is a “fiduciary” under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code of 1986 (Code) and the applicability date of related prohibited transaction exemptions including the Best Interest Contract Exemption and amended prohibited transaction exemptions (collectively PTEs) to address questions of law and policy.

The Council advocates for successful qualified plan and participant retirement outcomes through the collaborative efforts of experienced, qualified retirement plan advisors, investment firms and asset managers, and defined contribution plan service providers. The Council accomplishes this mission by its focus on:

- Identifying duties, responsibilities and attributes of the professional retirement plan advisor
- Sharing our professional standards with plan sponsors who are responsible for the success of their plans
- Providing collective thought capital to decision makers, product providers, legislators and the public
- Giving voice to the retirement plan advisor community
- Offering tools to evaluate advisors, ensuring the quality of services needed for successful retirement outcomes.

First, we commend the Employee Benefits Security Administration for its prompt response to the President’s Memorandum to the Secretary of Labor dated February 3, 2017 and we recognize the challenge that this Memorandum presents for the staff of the Administration.

Your proposal is to extend by 60 days the applicability date of the regulation defining who is a “fiduciary” under ERISA and the Internal Revenue Code and the applicability date of related PTEs. We believe a 60-day delay is inadequate and we request the Employee Benefits Security Administration consider delaying implementation by 266 days to the first business day following January 1, 2018. We also request that the Department consider extending the period for providing comments to August 8, 2017.

Our logic is fourfold. First, we believe that 60-days does not provide sufficient time for the staff of the Department of Labor to review and take into consideration the comments it will receive as it examines whether the final fiduciary rule may adversely affect the ability of Americans to gain access to retirement information and financial advice, and to prepare an updated economic and legal analysis concerning the likely impact of the final rule as part of the examination. The implications of this examination are far-reaching and it is important that the Department dedicate sufficient time and resources to the exercise.

Our second argument is that stakeholders in the industry need more than 60 days to articulate a thoughtful response to the Department's request for comments on:

- Whether the anticipated applicability of the final rule has harmed or is likely to harm investors,
- Whether the anticipated applicability of the final rule has results in dislocations or disruptions in the industry,
- Whether the final rule is likely to cause an increase in litigation and an increase in the prices that investors and retirees must pay to gain access to retirement services.

Our third argument is that plan sponsors, advisory firms, recordkeeping service providers need lead time to set in place the systems and operational processes required to comply with any new regulation. As the regulation stands now, implementation date is April 10. It is unlikely the Department of Labor will decide on a delay until just a few days before the deadline. The industry can't assume a delay will be granted. Stakeholders are obligated to abide by regulations as they stand now. With the April 10 implementation date looming, recordkeeping service firms and advisory firms must notify plan sponsors of next steps as soon as possible – if it is not already done or in process.

Finally, it is important to keep in mind the labor and energy required to reach, engage, and recontract more than 700,000 qualified retirement plans, most sponsored by small and micro businesses where the designated plan fiduciary has many responsibilities in addition to managing the retirement plan. An extra 266 days is a reasonable request for the industry to bring these plans into compliance with a new rule.

We are grateful for your consideration of our comments on the proposed rule extending the applicability date of the regulation defining who is a "fiduciary". We are available to meet with you to discuss our comments. For additional information, please contact me at (860) 653-1705.

Respectfully,



Eric Henon
Executive Director
Retirement Advisor Council