KING & SPALDING

Compensation and Benefits Insights

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DOL Delays Applicability Date of Expanded Fiduciary Rule

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On April 4th, 2017, the U.S. Department of Labor finalized a rule (the "Delay") that delayed the implementation of the broadened so-called "fiduciary rule" (the "Fiduciary Rule") and its related prohibited transaction exemptions. The Fiduciary Rule, which was finalized in April 2016, would expand the category of service providers who become fiduciaries under the Employee Retirement Income Security Act of 1974 ("ERISA") as a result of giving investment advice to ERISA plans, plan participants or IRA owners.

The Delay pushes back the applicability of the Fiduciary Rule from April 10, 2017 to June 9, 2017.

In addition, the Delay extends for 60 days the applicability dates of the transition relief to fiduciaries relying on the "Best Interest Contract" and "Principal Transaction" prohibited transaction exemptions promulgated under the Fiduciary Rule. Moreover, during a transition period from June 9, 2017 through January 1, 2018, compliance with certain conditions imposed by the Fiduciary Rule for these exemptions, such as requirements to make specific written disclosures and representations of fiduciary compliance in communications with investors, is not required. However, during the transition period, fiduciaries still must adhere to the existing "Impartial Conduct Standards" already applicable to them—e.g., they must continue to act in the best interest of investors, not make misleading statements, and their compensation must meet reasonable industry standards.

The practical result of the Delay is that certain investment advisers that otherwise would have been covered by the scope of the Fiduciary Rule effective April 10th will not be ERISA fiduciaries until June 9th. Additionally, fiduciaries generally must continue to operate by the existing set of rules applicable to investment advice through the end of 2017, rather than the more onerous requirements that would have taken place in absence of the Delay.

Our Practice

We advise public, private, taxable and tax-exempt clients on a wide variety of issues related to the design, preparation, communication, administration, operation, merger, split-up, amendment and termination of all forms of employee benefit plans and executive compensation programs and related funding vehicles. The firm has defended clients in significant high-profile ERISA litigation matters, including 401(k) plan "stock drop" cases and other breach-of-fiduciary-duty class actions.

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In light of President Trump's February 3, 2017 directive to the Department to re-evaluate the Fiduciary Rule, additional changes to the Fiduciary Rule may be forthcoming. Administrative action that could further impact the applicability of the Fiduciary Rule include: (i) additional delays beyond June 9, 2017, (ii) a revision to the Fiduciary Rule or its exemptions (which would entail proposed rules and a comment period), or (iii) a complete rescission of the Fiduciary Rule. King & Spalding will continue to monitor the development of the Fiduciary Rule and would be pleased to answer any questions you may have.

May and June 2017 Filing and Notice Deadlines for Qualified Retirement and Health and Welfare Plans

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Employers and plan sponsors must comply with numerous filing and notice deadlines for their retirement and health and welfare plans. Failure to comply with these deadlines can result in costly penalties. To avoid such penalties, employers should remain informed with respect to the filing and notice deadlines associated with their plans.

The filing and notice deadline table below provides key filing and notice deadlines common to calendar year plans for the next two months. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is generally delayed until the next business day. Please note that the deadlines will generally be different if your plan year is not the calendar year. Please also note that the table is not a complete list of all applicable filing and notice deadlines (including any available exceptions and/or extensions), just the most common ones. King & Spalding is happy to assist you with any questions you may have regarding compliance with the filing and notice requirements for your employee benefit plans.

Deadline	Item	Action	Affected Plans
May 14 (within 45 days after the close of the first quarter of plan year)	Benefit Statements for Participant-Directed Plans	Deadline for plan administrator to send benefit statement for the first quarter of the plan year to participants in participant-directed defined contribution plans.	Defined Contribution Plans that allow participants to direct investments
	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the first quarter of the plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	

Deadline	Item	Action	Affected Plans
May 15 (the 15th day of the 5th month after the end of the plan year)	IRS Forms 990 and 990-EZ	Deadline for tax-exempt trusts associated with Qualified Retirement Plans and voluntary employee beneficiary associations (VEBAs) to file Forms 990 or 990-EZ with the IRS for prior year. A 3-month extension may be obtained by filing a Form 8868, which must be filed by this date.	Qualified Retirement Plans* Voluntary Employee Beneficiary Associations
June 30 (last day of 6th month following the plan year)	Excess Contributions	Deadline for plan administrator to distribute eligible automatic contribution arrangement (EACA) excess contributions and earnings from the prior year to avoid 10% excise tax.	401(k) Plans with EACA

* Qualified Retirement Plans include all defined benefit and defined contribution plans that are intended to satisfy Internal Revenue Code §401(a).