KING & SPALDING

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No Further Delays for Expanded Fiduciary Rule

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On May 22nd, 2017, the U.S. Department of Labor ("DOL") announced that the broadened "fiduciary rule" (the "Fiduciary Rule") and its related prohibited transaction exemptions will take effect on June 9th, 2017 without further delay.[1] The Fiduciary Rule, which was finalized in April 2016, will expand the category of service providers who become fiduciaries under the Employee Retirement Income Security Act of 1974.

As discussed by King & Spalding here, the applicability of the Fiduciary Rule was delayed in April from its original applicability date of April 10th, 2017 to June 9th, 2017 (the "Delay").

While the Fiduciary Rule will not be further delayed, the DOL has announced that from June 9th, 2017 until January 1st, 2018, no enforcement action will be taken against fiduciaries who are working diligently and in good faith to comply with the Fiduciary Rule. In addition, the DOL's phased implementation of certain conditions imposed by the Fiduciary Rule, originally announced in connection with the Delay, will remain in place. That is, during the transition period from June 9th, 2017 until January 1st, 2018, compliance with certain conditions imposed by the Fiduciary Rule, such as requirements to make specific written disclosures and representations of fiduciary compliance in communications with investors, is not required.[2]

In an opinion piece for the Wall Street Journal, new DOL Secretary Alexander Acosta indicated that the Fiduciary Rule should not be further delayed out of "respect for the rule of law." Nonetheless, Acosta noted that the Fiduciary Rule

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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1 See DOL Field Assistance Bulletin 2017-02. See also, DOL Conflict of Interest FAQs (Transition Period), May 2017.

2 Note, however, that 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.

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"may not align" with President Trump's deregulatory goals, leaving the door open for possible changes or repeal at a later date.[3]

King & Spalding will continue to monitor the development of the Fiduciary Rule and would be pleased to answer any questions you may have.

June and July 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
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
July 29 (no later than 210 days after the end of the plan year in which the change was effective)	Summary of Material Modifications	Deadline for plan administrator to distribute summary of material modifications reflecting any changes to the summary plan description (SPD) arising from any plan amendments adopted during prior year (unless a revised SPD is distributed that contains the modification).	Retirement Plans Health & Welfare Plans

3 "Deregulators Must Follow the Law, So Regulators Will Too" (Wall Street Journal, May 23, 2017).

Deadline	Item	Action	Affected Plans
July 31 (the last day of the 7th month following the plan year)	DOL Form 5500	Deadline for plan administrator to file Form 5500 (Annual Return/Report of Employee Benefit Plan) for prior year. This deadline is extended 2 ½ months if the plan administrator files Form 5558.	Retirement Plans Health and Welfare Plans
	IRS Form 8955-SSA	Deadline for plan administrator to file Form 8955-SSA (Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits). This deadline is extended by 2 ½ months if the plan administrator files a Form 5558.	Retirement Plans
July 31	Patient Centered Outcomes Research Institute (PCORI) Fee	Deadline for self-insured health plans to pay a fee for 2016 plan year using IRS Form 720. Note that the fee is not tax deductible. Insurers are responsible for paying the fee on behalf of insured plans.	Self-Insured Group Health Plans (including retiree plans)