DOL Announces Temporary Enforcement Policy
for the Fiduciary Duty Rule

In its latest guidance for the Fiduciary Duty Rule, which affects retirement plan financial advisers, the DOL has issued a Temporary Enforcement Policy. In FAB 2017-02, the DOL announced that the Enforcement Policy will be effective during the transition period June 9, 2017 to January 1, 2018. At the same time, the DOL issued Conflict of Interest FAQs (or frequently asked questions).

The FAQs clarify that during the transition period, financial institutions and advisers must comply with “impartial conduct standards,” which require financial institutions to:

(1) Give advice that is in the “best interest” of the retirement investor. The best interest standard has two components, prudence and loyalty:

- Under the prudence standard, the advice must meet a professional standard of care, as specified in the text of the exemption;
- Under the loyalty standard, the advice must be based on the best interest of the customer, rather than the competing financial interest of the adviser or firm;

(2) Charge no more than reasonable compensation; and

(3) Make no misleading statements about an investment transaction, compensation, and conflicts of interest.

The FAB includes a reminder that the President, by a Memorandum to the Secretary of Labor, dated February 3, 2017, directed the Department to examine whether the Fiduciary Duty Rule may adversely affect the ability of Americans to gain access to retirement information and financial advice. The Memorandum directed the Secretary to prepare an updated economic and legal analysis concerning the likely impact of the Fiduciary Duty Rule. The FAB states that the Department is "actively engaged in a careful analysis of the issues raised in the President's Memorandum." The DOL intends to issue a Request for Information in the near future seeking additional public input.

Plan fiduciaries should be reminded that they have a duty under ERISA to monitor service providers. Therefore, it would be appropriate for a Plan Sponsor (the employer, trustee or other fiduciary) to verify that the Plan's financial adviser is in compliance with the Fiduciary Duty Rule.

Please let us know if we can be of assistance.

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