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## The Fiduciary Rule Is Under Review, but What Does that Mean?

**ROBERT R. GOWER**



On Friday, February 3, 2017, President Trump signed an executive order calling for the United States Department of Labor ("DOL") to review the DOL Fiduciary Rule (the "Rule"), which is scheduled (by its terms) to become applicable on April 10, 2017. The implications of the request for review may be significant.

The Rule, commonly known as the "Conflict of Interest Rule," was issued on April 8, 2016, during the Obama administration. The Rule is designed to broaden the definition of who is a fiduciary on the basis of rendering investment advice to retirement plan investors. By broadening the definition of "fiduciary investment advice," the Rule subjects more investment professionals to a fiduciary standard of conduct, thus requiring those professionals to avoid conflicts of interest and otherwise act in the best interests of retirement plan investors. Furthermore, the Rule expands the definition of fiduciary investment advice beyond qualified retirement plans, such as 401(k) and profit sharing plans, to hold investment professionals to a fiduciary standard when rendering advice concerning individual retirement accounts ("IRAs") and in making recommendations on rollovers.

In the year leading up to the applicability date, questions and concerns have arisen regarding the practical implications of the Rule, many of which focus on compensation practices and related disclosures that would be required by the Rule. Moreover, the Rule is facing a number of legal challenges, including whether the DOL has the ability to apply a fiduciary standard to IRA investment advice.

The executive order, which is in line with the Trump Administration's stated desire to reduce regulations, calls for a review of a number of issues, including whether the Rule is likely to harm investors by potentially reducing access to retirement savings offerings, product structures, savings information and financial advice, as well as increasing costs. The executive order further states that if any of the issues reviewed results in the conclusion that the Rule may adversely affect access to retirement information or financial advice, the Secretary of Labor is directed to revise or rescind the Rule.

Significantly, the executive order does *not* delay the Rule's April 10 applicability date, although the acting Secretary of Labor has stated that the DOL is reviewing legal options to delay that date.

Plan sponsors and service providers have spent the better part of a year ramping up for the application of the Rule, including discussions about compensation practices, participant experience and the design of service models. In many cases, plan sponsors have already entered into new agreements with service providers. Similarly, IRA managers also have examined compensation practices and service models, and have worked to prepare disclosures to comply with the Rule. As a result, the review raises a number of questions about fiduciary responsibility going forward, both for plan sponsors and providers.

Please join us on March 1 as we discuss these issues and the path ahead in a 60-minute webinar, *What Comes Next? – Lessons Learned & Practical Implications of the Fiduciary Rule Under Review*. In the coming days, you should receive an email invitation to join us for the webinar and a registration link will be posted to our website.

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