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Department of Labor's Proposed Delay of the Controversial Fiduciary Rule and Next Steps

Just last week, the U.S. Department of Labor (DOL) published a *proposed* 60-day delay of the fiduciary/conflict of interest rule (and attendant exemptions) that is set to go into effect on April 10. The rule, finalized last year by the Obama Administration, contains a new definition of "investment advice fiduciary," which will sweep in thousands of advisers to plans and IRAs, forcing them to comply with one of the new or amended exemptions adopted by the DOL in connection with the new fiduciary rule if they wish to continue to maintain their business model of being compensated through third-party payments. This has significant implications not only for those advisers and others in the product distribution channel, but also for the product manufacturers.

President Donald J. Trump, however, ordered the DOL to reassess the legal and economic analysis it used in formulating the fiduciary rule over the past couple of years, which essentially drives the now-proposed delay. In connection with the proposed delay, the DOL is seeking comments on whether the fiduciary rule (in whole or in part) should in fact be delayed by 60 days to a new effective date of June 9. These comments are due by March 17.

The DOL is also more broadly seeking feedback on its analysis that underpinned the final fiduciary rule announced last year. Last week's proposed delay contained a series of questions on which the DOL wants comment. Ultimately, the DOL needs feedback on whether any changes to the rule, including an outright rescission, are necessary. These comments are due by April 17.

The possible delay of the fiduciary rule has sown uncertainty in the market. Moreover, the possibility of the DOL either rescinding or revising the rule creates numerous options for the various stakeholders. Those in favor of the rule, either on principle or because they have already revised business models to comply with the rule, may feel compelled to submit comment letters against any delay and any changes to the rule. Those opposed to the rule may view the possible delay of the rule as essential, and further, as an opportunity to advocate for amendments to, or rescission of, the rule. Coloring the analysis for both proponents and opponents is the significant media coverage and politicization of the rule. Stakeholders need to decide whether they will comment on supporting or opposing the proposed delay of the rule by March 17. Stakeholders will also need to determine whether they will comment on the substantive provisions and analysis of the rule by April 17.

Those who would like to discuss this proposed delay further, or receive assistance with the drafting of any comment letters, should feel free to contact **Jim Podheiser** at jpodheiser@stradley.com or 215-564-8111, or **George Michael Gerstein** at ggerstein@stradley.com, or 202-507-5157.