DOL Provides Temporary Enforcement Relief on Fiduciary Rule

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The U.S. Department of Labor ("DOL") issued a Field Assistance Bulletin (FAB 2017-01) on Friday, March 10, 2017 to address near-term compliance concerns relating to a proposed 60-day delay of the Fiduciary Rule. As previously reported, the DOL issued a proposal on March 2, 2017 to delay the April 10, 2017 implementation date of the Fiduciary Rule by 60 days. This 60-day delay is not yet final, however, and there has been confusion over what will happen if a decision on the delay is not made until after April 10 or if a decision is made too close to the implementation date to allow time for compliance. Although the DOL has stated that it intends to issue its decision before April 10, it issued the Bulletin to announce a temporary enforcement policy which provides certain limited enforcement relief.

The temporary enforcement policy provides relief in two forms:

- First, if there is a "gap period" such that the Fiduciary Rule becomes applicable on April 10 and a delay subsequently goes into effect, the DOL will not initiate any enforcement action due to non-compliance during the "gap period;"
- Second, in the event that there is a decision that no delay will be issued, the DOL will not initiate any enforcement action due to non-compliance as of the April 10 applicability date, "provided that the adviser or financial institution satisfies the applicable conditions of the rule…within a reasonable period after the publication of a decision." Note that, while it is not entirely clear what will constitute a "reasonable period" for purposes of this relief, that period will run from the date of the decision, not the April 10 applicability date.

Foley Hoag will keep its clients informed of further developments as they occur. Any investment adviser with further questions regarding the effect of this executive action should contact your Foley Hoag lawyer.

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