



FINEX Alert

June 2017

DOL's new rule goes into effect— wave of fiduciary litigation may follow

By Rob Yellen

No more delays! The Department of Labor (DOL) [announced](#) that it picked June 9 as the date its new fiduciary rule [[final regulations linked here](#)] will go into effect. While the DOL is willing to provide temporary enforcement relief to fiduciaries diligently working on compliance, the door opens for civil litigation on June 9.

What does this development mean from a fiduciary liability insurance and a professional liability insurance perspective?

- Plan fiduciaries and investment professionals should be finalizing compliance plans and ensuring that training is provided where needed.
- D&O — especially side-A D&O, fiduciary liability and professional liability insurance policies should be reviewed to make sure coverage is aligned to address the potentially expanded exposure.
- To mitigate regulatory risk, be proactive even if there is more to do. For fiduciaries who are working diligently and in good faith to comply with the fiduciary duty rule and exemptions, the DOL has provided temporary enforcement relief. The agency asserted it will not pursue claims before 2018 if you are working diligently and in good faith to comply with the new rule. For details, see the DOL's [Field Assistance Bulletin](#).

- Unfortunately, there is no protection from participant lawsuits, since participants will have a private right of action to pursue legal remedies against an investment advice fiduciary once the rule becomes applicable on June 9, 2017.
- The full extent of the Best Interest Contract (BIC) Exemption and Principal Transactions Exemption will not become applicable until January 1, 2018. Fiduciaries relying on those exemptions are required to adhere to conditions imposed under the Impartial Conduct Standards during the “transition period” that goes from June 9, 2017 through January 1, 2018. Those conditions require that fiduciaries:
 - (1) follow the “best interest standard” when making investment recommendations;
 - (2) charge no more than reasonable compensation for services and;
 - (3) refrain from making misleading statements.

Unless further delayed, fiduciaries will be required to comply with the other conditions of the exemptions (e.g., making specific written disclosures and representations of fiduciary compliance in communications with investors) beginning on January 1, 2018.

All that said, the debate over the rule seems far from over, and additional change seems inevitable.

For more information on the rule itself, see <http://blog.willis.com/2016/04/first-look-inflated-risk-from-the-new-dol-fiduciary-standard-conundrums/>.

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