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BENEFITS REPORT

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DOL Issues Final Fiduciary Rule

ADRINE ADJEMIAN

On Wednesday, April 6, 2016, the Department of Labor (DOL) issued a pre-publication version of its long-awaited controversial final fiduciary advice regulatory package. The package is scheduled for publication in the Federal Register on April 8, 2016.

This rule is the first meaningful update to retirement advice regulations since 1975, when the Employee Retirement Income Security Act (ERISA) was enacted to protect participants in private pension plans. Some of the noteworthy changes between the proposed regulatory package released by the DOL last year and the final rule and exemptions include:

- ***A less onerous Best Interest Contract Exemption (BICE):*** The DOL eliminated the limited asset list, meaning that advice to invest in all asset classes is covered by the BICE, expanded the coverage of the BICE to include advice provided to sponsors of small plans, and included language to make clear that advisers may continue to sell proprietary products.

- ***Streamlined level fee provision:*** A provision to exempt level fee fiduciaries (fiduciaries that receive the same compensation regardless of the particular investment the client makes) from the contract requirement has been added to the final BICE, provided that certain documentation is kept.

- ***Education activities:*** The final rule describes the types of information and activities that constitute non-fiduciary investment education, including plan information and general investment, financial and retirement information.

- ***Reduced disclosures***: The DOL entirely eliminated the annual disclosure requirement and the requirement to include projections. Transaction disclosures will only require firms to explain conflicts of interest.

- ***Seller's exception from fiduciary status:*** This exception has been expanded and is now available to any plan or IRA that is either represented by an independent fiduciary (that satisfies certain criteria and who has financial expertise) or that has $50 million in assets, a significantly lower threshold than the $100 million in assets in the proposed rule.

- ***Call centers and required contract parties:*** The DOL modified the contract requirement so that clients do not have to sign a new contract for each interaction with a different employee of the same provider; only one contract needs to be signed between the provider and the client.

Effective Date

The DOL has adopted a phased implementation approach to the final rule. The rule will take effect on April 10, 2017, one year after the rule's publication, but at that time, providers will be required only to comply with more limited conditions in order to take advantage of the BICE, such as acknowledging their fiduciary status, making basic disclosures regarding conflicts of interest, and adhering to the best-interest standard. Providers will then have until January 1, 2018, the date by which all new systems and procedures must be in place, to comply with the remainder of the requirements.

Our Continuing Analysis and Coverage of the Final Rule

Trucker Huss will be presenting a complementary webinar, *The Department of Labor's Final Fiduciary Rule is Here — A First Look for Plan Sponsors*, on Wednesday, April 20, 2016, from 10:00 a.m. – 11:15 a.m. PDT. The speakers, Benjamin Spater, Nicholas White, and Robert Gower, will provide a comprehensive overview of the final rule and will cover the practical steps Plan sponsors should be taking with service providers to comply with the rule.

We will also provide a detailed analysis of the final rule in our next monthly newsletter. In the meantime, if you have any questions, please contact Ben, Nick or Robert.

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The Trucker ✦ Huss *Benefits Report* is published monthly to provide our clients and friends with information on recent legal developments and other current issues in employee benefits. Back issues of *Benefits Report* are posted on the Trucker ✦ Huss web site (www.truckerhuss.com).

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