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Delays for New Disability Claims Procedures and Full Implementation of Fiduciary Rule

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On November 24, 2017, the Department of Labor (DOL) announced a delay, until April 1, 2018, of the applicability of the final rule amending the claims procedure requirements for employee benefit plans that provide disability benefits. We detailed the final rule, which was to have been effective as of January 1, 2018, in What's New in Claims Procedures for Disability Benefits in January 2017. The 23-page announcement, which is expected to be published in the Federal Register on November 29, 2017, is largely devoted to the rationale for delaying the effective date for the final rule, including the objections of stakeholders, the need to complete the comment solicitation process and the intention to reexamine all submitted data in light of Executive Order 13777, Enforcing the Regulatory Reform Agenda issued by President Trump on February 24, 2017. Plan sponsors should stay tuned for further DOL action this coming spring.

In a similar action, on November 27, 2017, the DOL announced that the transition period to fully implement the new fiduciary rule first issued on April 8, 2016 will be extended from January 1, 2018 to July 1, 2019. We discussed the new fiduciary rule and its initial delays in detail in DOL New Fiduciary Regulations: Action Items for the Next Year, The Delayed Fiduciary Rule May Have Already Changed the Landscape and The Rubber Meets the Road for the Fiduciary Rule – Almost. The extension of the special transition period relates to certain conditions required for reliance on the Best Interest Contract Exemption (BICE), the Class Exemption for Principal Transactions in Certain Assets between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs and Prohibited Transaction Exemption 84-24. During this extended transition period, financial institutions and advisors are advised to continue to comply with the "impartial conduct standards" including giving advice in the "best interest" of the retirement investor, charging no more than reasonable compensation and making no misleading statements about the advice in order to rely on the exemptions. Plan sponsors and individual retirement investors can expect their advisors' compliance with the new fiduciary rule's requirements, even though full implementation has been delayed again. As long as institutions and advisors make a good faith effort to comply, the enforcement relief that was announced earlier this year also will continue.

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