Presidential Memo Directs Department Of Labor to Look At Conflict of Interest/Fiduciary Regulation Again

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Many retirement plan sponsors, fiduciaries and retirement plan service providers and investment advisors have been waiting and hoping for a delay in the Conflict of Interest or Fiduciary (the "COI Package") regulatory package that was set to begin applying to retirement plans initially on **April 10, 2017**. A Presidential Memo was recently posted on the White House website. This memo **does not delay** the date on which the COI Package applies to retirement plan transactions and particularly roll overs out of retirement plans, but keep reading as this is only the beginning of this chapter.

Instead the memo direct the U.S. Department of Labor (the "Department") to re-examine the COI Package and if it finds that any of the following three statements are correct or if the Department finds any other reason that the COI Package is inconsistent with the current administration's priority of empowering Americans to make their own financial decisions, then the Department is directed to publish for notice a comment on proposed rule rescinding or revising the COI Package. The three criteria that might trigger a revision or rescission are:

(1) Whether the anticipated applicability of the COI Package has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice;

(2) Whether the anticipated applicability of the COI Package has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees; and

(3) Whether the COI Package is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services.

While many had hoped for a delay in the applicability of the COI Package, this is not a delay, but it is a first step in a process that could alter the COI Package itself or at least delay its implementation.

So for retirement plan sponsors, retirement plan fiduciaries, investment advisors and other retirement plan service providers, the April 10, 2017 initial applicability date and the limited transition rule have not changed as of today. The Department is directed to review the COI Package again considering this administration's priorities, so we wait to see what they decide in light of the new priorities.

Shortly after the President's memo was released, the executive acting for the Secretary of Labor posted that the process would start and that they would be looking into an extension. There are a number of steps to change regulations that have been issued.

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