GROOM LAW GROUP CHARTERED

# BENEFITS BRIEF

June 30, 2017 www.groom.com

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## DOL Releases Request for Information on Fiduciary Rule and Prohibited Transaction Exemptions

On June 29, 2017, the U.S. Department of Labor ("DOL") released a request for information on the Fiduciary Rule and prohibited transactions (the "RFI"). The RFI seeks information on specific ideas for possible new exemptions or regulatory changes based on recent public comments and market developments. The DOL believes that business models have developed that may warrant regulatory or exemption changes. In particular, the DOL is interested in the development of clean shares in the mutual fund industry.

Further, the RFI seeks comments upon whether the Transition Period should extend beyond January 1, 2018. Specifically, a question is whether an additional delay in the January 1, 2018 applicability date would allow for more effective retirement investor assistance and help avoid needless or excessive expense as firms build systems and compliance structures that may ultimately be unnecessary or mismatched with the DOL's final decisions on the issues raised by the Presidential Memorandum.

Responses to the RFI's question regarding additional delay of the January 1, 2018 date must be submitted on or before 15 days after the RFI is scheduled for publication in the Federal Register. Responses to the RFI's other questions must be submitted on or before 30 days after the RFI is scheduled for publication in the Federal Register. As of the time of writing this alert, the RFI and Federal Register's website do not indicate when the RFI is scheduled for publication.

### What is a RFI?

The RFI is considered a pre-rule in the administrative rulemaking process and comes before any formal proposal. Any such proposal would then be subject to notice and comment. Hearings would also be likely given that the Fiduciary Rule is so controversial and the requirement that DOL offer hearings on exemptions provide ERISA section 406(b) relief. Only after such a proposal, comments, and hearings can a final regulation or exemption be published. Typically, final regulations do not take effect immediately upon publication. Therefore, this RFI is only a single step in a potentially months or years long process aimed toward revising the Fiduciary Rule in accordance with the Presidential Memorandum on the Fiduciary Rule, 82 Fed. Reg. 9675 (Feb. 3, 2017) (the "Memorandum"), directing DOL to study the Fiduciary Rule, and, if warranted, to rescind or revise it.

### Issues for Comment

The RFI requests specific comments on the following topics:

- Potential Delay of January 1, 2018 Applicability Date
- Contract Requirement in BIC and Principal Transaction Exemptions
- Alternative Streamlined Exemption

- Incorporation of Securities Regulation of Fiduciary Investment Advice
- Principal Transactions
- Disclosure requirements
- Contributions to Plans or IRAs
- Bank Deposits and Similar Investments
- Grandfathering
- PTE 84-24
- Communications with Independent Fiduciaries with Financial Expertise

**Next Steps**

It is likely that the DOL will eventually make changes to the Fiduciary Rule and/or exemptions, so it is important that the retirement services industry continue to advocate for positive changes that promote the provision of services to retirement consumers under a workable compliance regime. As Secretary Acosta mentioned in his testimony in a House appropriation hearing earlier this year, the DOL needs data in order to make changes to the Fiduciary Rule. This is an opportunity for service providers to share that data. As with the comments to the Presidential Memorandum earlier this spring, we believe that the RFI responses can serve as a vehicle to comment more broadly than just a response to the specific questions in the RFI and encourage clients to do so. Please contact a Groom Law Group attorney if you would like to discuss this RFI further.