

Morgan Lewis

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Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: Definition of the Term “Fiduciary” and Related Prohibited Transaction Exemptions
Proposed Extension of Applicability Date (RIN 1210-AB79)

Ladies and Gentlemen:

Morgan, Lewis & Bockius LLP (“Morgan Lewis”) is commenting on the Department of Labor’s (“Department”) proposal to extend the applicability date of the amendments to the regulation defining the term “fiduciary,” and the related prohibited transaction exemptions (the “Rule”).

Morgan Lewis is an international law firm with extensive employee benefits, financial services, and investment management practices. We counsel plan sponsors on issues related to both pension and health and welfare plans and also assist service providers, including broker-dealers, investment advisers and consultants, banks and trust companies, recordkeepers, and third party administrators with ERISA and Internal Revenue Code compliance and reporting obligations. As such, some or all of our clients’ service arrangements will be subject to the Rule.

As the DOL staff knows, since before the Rule was finalized, service providers and plan sponsors have been taking steps to analyze the Rule, assess the Rule’s impact on their businesses, and restructure their business models and offerings to comply with the Rule.

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Our clients have been and continue to be deeply involved with implementing the requirements of the Rule, which significantly transforms the retirement services landscape in its entirety.

Because of the uncertainty regarding the Rule and the President's Memorandum,¹ we believe that a 60-day delay, at a minimum (but more likely 180 days or longer), of the applicability date, effective immediately upon becoming final, is necessary for the Department to thoroughly examine the Rule as required by the President's Memorandum.

As noted above, though our clients have been diligently working toward an April 10, 2017, compliance date, a delay would also provide firms additional time to build and implement comprehensive offerings that are compliant with the Rule. We note that such a delay is consistent with the Department's past practices, such as the delays granted in connection with the rules requiring service providers to disclose fees under ERISA Section 408(b)(2).

For these reasons, the April 10, 2017, applicability date of the Rule must be delayed by at least 60 days, but more likely 180 days.

Thank you for your consideration of this request. If you have any questions or require any additional information, please do not hesitate to contact us at 202.739.5143 for Mr. Kleinman or 202.739.5120 for Mr. Richman.

Very truly yours,



Daniel R. Kleinman



Michael B. Richman

¹ Memorandum of February 3, 2017 for the Secretary of Labor re: Fiduciary Duty Rule, 82 Fed. Reg. 9675.