DOL'S FIDUCIARY REGULATION – ONE STEP CLOSER TO FINAL

Date: 8 February 2016

Investment Management Alert

The Department of Labor's (DOL) controversial fiduciary regulation, which will subject a multitude of new financial market participants to strict fiduciary requirements under the Employee Retirement Income Security Act of 1974 (ERISA), is one step closer to being finalized. On January 28, 2016, the DOL delivered the final regulation to the White House Office of Management and Budget (OMB) for its review, the last stop on a long journey before the final regulation is released and published in the Federal Register. While the OMB typically has up to 90 days to complete its review, we believe the final regulation will be published in late March or early April.[1]

The regulation is expected to have material consequences for many types of financial market participants, including:

- Investment managers
- Broker-dealers
- Banks and trust companies
- Fund complexes
- Insurance companies
- Corporate 401(k) plans
- Corporate pension plans
- 401(k) recordkeepers
- Consultants

These and other financial market participants affected should review their activities with respect to ERISA and individual retirement account clients, including both investment funds that are deemed to hold ERISA plan assets and non-plan asset funds with retirement investors, in order to analyze the regulation's implications.[2] Many firms will need to modify their sales practices and update their policies and procedures. Corporate retirement plans should assess the regulation's impact on their service providers.

CLIENT EVENTS

Once the regulation is final, K&L Gates will host and participate in several events to educate clients on the new rules and publish a detailed client alert summarizing the final rule. The events will be designed to assist clients with the many practical compliance issues that will need to be addressed.

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BACKGROUND

The DOL and the Obama administration have put considerable effort into trying to finalize the regulation before a new administration takes office. The following is a recap of the regulation's long journey:

- *October 2010* — DOL proposed a regulation defining who is a "fiduciary" of a plan under ERISA as a result of providing investment advice
- *March 2010* — DOL held a public hearing on the proposal
- *September 2011* — DOL announced it would withdraw the proposal and propose a new rule
- *February 2015* — The White House issued a report entitled, "The Effects of Conflicted Investment Advice on Retirement Savings"
- *April 2015* — DOL re-proposed the regulation and withdrew the 2010 proposal
- *July 2015* — Comment period closed after DOL received thousands of comment letters
- *August 2015* — DOL held a four-day public hearing on the proposal
- *August 2015* — DOL reopened the comment period and received hundred of additional comments
- *January 2016* — OMB received the regulation for its review

Notes:

[1] The rule's many opponents may still pursue measures in an effort to stop the rule from becoming effective (e.g., a legal challenge or legislative review). On February 2, 2016, the House Education and Workforce Committee approved two bills that would, if enacted, require Congress to approve the regulation before it goes into effect.

[2] We believe there will be differences between the yet-to-be-seen final regulation and the regulation as proposed back in April 2015. The full implications of the regulation, therefore, are not yet known. Our detailed discussion of the proposed regulation can be found here.

Please contact any member of the ERISA Fiduciary Group listed below if you want to discuss these matters.

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