

What's Next for the DOL Fiduciary Rule?

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Yesterday afternoon, President Trump issued a [memorandum](#) directing the DOL to review the [fiduciary rule](#) it released last April that expanded the definition of an investment advice fiduciary with respect to retirement investors. The fiduciary rule became effective on June 7, 2016, but the requirements under the rule would not have become applicable until April 10, 2017.

The memorandum does not automatically delay or rescind the rule; rather, it directs the DOL to examine the rule to determine whether the rule may adversely affect the ability of Americans to gain access to retirement information and financial advice and, as part of the examination, prepare an updated economic and legal analysis concerning the likely impact of the rule. Further, the memorandum directs the DOL to propose a new rule to rescind or revise the fiduciary rule if it concludes that the fiduciary rule is likely to do more harm than good or is inconsistent with the priorities of the new administration. Proposal of a new rule to rescind or revise the fiduciary rule would require the DOL to go through the full notice-and-comment period, which generally runs for no less than 60 days.

Shortly after the issuance of the Presidential memorandum, Acting Secretary of Labor Hugler [stated](#) that the DOL will consider its legal options to delay the applicability date of the fiduciary rule. It remains to be seen how this delay would be achieved. One option would be to issue an interim final rule that delays the fiduciary rule's applicability date, if the DOL can find that it has "good cause" under the Administrative Procedure Act to issue a rule without advanced notice and comment.

Independent of any action by the DOL, Congress could also pass legislation to repeal the fiduciary rule or the rule could be invalidated by any of a number of cases pending in federal courts challenging its legality.

As a practical matter, today's Presidential memorandum confirms that the new administration views the fiduciary rule in its current form unfavorably, and signals that withdrawing or replacing the rule will be a priority of the DOL under its new leadership. Acting Secretary of Labor Hugler's follow-up statement also makes clear that it is unlikely that the fiduciary rule will become applicable in April 2017 as originally scheduled. Financial institutions, many of which have been undertaking massive overhauls in their business models relating to retirement investors to comply with the rule by its applicability date, will not truly have any certainty until the rule is officially delayed or rescinded.

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