

Delay of Full Applicability Date of Exemptions Related to Fiduciary Rule Now Official

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As expected, the DOL has [officially delayed](#) the applicability date of the full requirements of the Best Interest Contract (BIC) Exemption, Principal Transactions Exemption and PTE 84-24 by 18 months, from January 1, 2018 to July 1, 2019. [Our post from earlier this year](#) described which requirements of these exemptions had become applicable and which requirements were being delayed. To recap, the existing requirements of the exemptions and the timeline of the remaining requirements now look as follows after this latest round of delay:

As of June 9, 2017

- BIC Exemption and Principal Transactions Exemption (see Section III of [our visual memorandum](#)) became available, and both exemptions would only require fiduciaries to comply with the Impartial Conduct Standards.
- Impartial Conduct Standards in PTE 84-24 (see Section IV of [our visual memorandum](#)) became applicable, meaning that those who wish to rely on PTE 84-24 would need to comply with the Impartial Conduct Standards (but not the other amendments to this exemption).
- Amendments to PTEs 75-1, 77-4, 80-83, 83-1 and 86-128, which primarily added the Impartial Conduct Standards to these exemptions (see Section IV of [our visual memorandum](#)), became applicable.

On July 1, 2019

- Remaining conditions of the BIC Exemption and Principal Transactions Exemption (e.g., written contracts, warranties, disclosures) will become applicable.
- Remaining amendments to PTE 84-24 will become applicable.

This means that for the BIC Exemption and Principal Transactions Exemption, until July 1, 2019, financial institutions and advisers only have to comply with the Impartial Conduct Standards to satisfy the exemptions' requirements, which generally means that they have to give prudent advice that is in the best interest of the retirement investor, charge only reasonable fees and make no misleading statements.

The DOL stated in the preamble of the final rule granting the delay that the delay is "necessary and appropriate" because it would allow the DOL to complete its broader examination of the fiduciary rule as directed by the [Presidential Memorandum](#) from earlier this year, as well as its review of the substantial public comments received in response to its multiple solicitations for comments during the course of the year, while at the same time provide some degree of certainty to industry stakeholders who need to comply with the rule and exemptions. Interestingly, the DOL also noted that it anticipates that it will propose in the near future a new streamlined class exemption and that it intends to work with the SEC and other regulators (such as FINRA and NAIC) to develop such a proposal or other modifications to the rule and exemptions, hinting that changes may be on the way.

On the enforcement side, the DOL indicated, helpfully, that it will also extend the current enforcement moratorium for fiduciaries that are working "diligently and in good faith" to comply with the rule and exemptions to July 1, 2019.

We will continue to monitor any further development to the rule and exemptions and post any updates here. As stated in our prior post, we would reiterate that the expanded definition of “fiduciary investment advice” under the rule that went into effect on June 9 is still applicable and the delay described in this post applies only to the requirements of the exemptions related to the rule upon which persons who are considered fiduciaries under the expanded definition may rely.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Edmond T. FitzGerald

+1 212 450 4644
edmond.fitzgerald@davispolk.com

Chaoyuan (Charles) Shi

+1 212 450 3346
charles.shi@davispolk.com

Veronica M. Wissel

+1 212 450 4794
veronica.wissel@davispolk.com

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