

# Labor Secretary Acosta: No Further Delays on DOL Fiduciary Rule Rollout

*Secretary of Labor Alexander Acosta says the Department of Labor's ("DOL") fiduciary standard rule will roll out as scheduled in June.*

The DOL's [fiduciary rule](#) was scheduled to go into effect in phases starting April 10<sup>th</sup>. On February 3<sup>rd</sup>, the President [ordered](#) the Secretary of Labor to review the rule and report back to him. This prompted the DOL to file a new rule seeking a delay in the fiduciary rule's implementation. The first phase of the DOL's rule was later set to be implemented June 9<sup>th</sup>.

## Pressure from Both Sides

Mr. Acosta has heard from both sides of the issue in Congress, with Republicans urging that the entire rule be delayed indefinitely and Democrats insisting that there be no further delays. Almost immediately after he was approved by the Senate, Secretary Acosta got a [May 2<sup>nd</sup> letter](#) signed by 124 Congressional Republicans urging the DOL to extend the delay implementing the fiduciary rule and to eventually kill it. More recently, three Democratic members of the Senate Health Education Labor and Pensions Committee wrote to Secretary Acosta suggesting he had already decided to extend the freeze indefinitely. The [May 19<sup>th</sup> letter](#) was signed by Ranking Member Patty Murray (D-WA), and Senators Cory Booker (D-NJ) and Elizabeth Warren (D-MA). In their letter, the Senators urged Mr. Acosta to "demonstrate your commitment to America's retirement savers and allow the rule and the consumer protections and savings contained therein to take effect next month."

## Surprise Announcement

The Secretary announced his determination to proceed as scheduled June 9 via an Op Ed commentary [published](#) in the *Wall Street Journal* May 22: "The Labor Department has

concluded that it is necessary to seek additional public input on the entire Fiduciary Rule, and we will do so. We recognize that the rule goes into partial effect on June 9, with full implementation on Jan. 1, 2018. Some have called for a complete delay of the rule. We have carefully considered the record in this case, and the requirements of the Administrative Procedure Act, and have found no principled legal basis to change the June 9 date while we seek public input. Respect for the rule of law leads us to the conclusion that this date cannot be postponed. Trust in Americans' ability to decide what is best for them and their families leads us to the conclusion that we should seek public comment on how to revise this rule."

### What's Next?

As to where the fiduciary rule may land after the review is completed, the Secretary suggested that the SEC must be an active participant: "Under the Obama administration, the Securities and Exchange Commission declined to move forward in rule-making. Yet the SEC has critical expertise in this area. I hope in this administration the SEC will be a full participant." The review will continue through January 2018, although in the end the fate of the rule remains uncertain. Said the Secretary: "Although courts have upheld this rule as consistent with Congress's delegated authority, the Fiduciary Rule as written may not align with President Trump's deregulatory goals." In the meantime, the Department announced May 22<sup>nd</sup> that it will not enforce the rule during the *interregnum*. [Field Assistance Bulletin No. 2017-02](#) advises DOL field staff: "The Department has repeatedly said that its general approach to implementation will be marked by an emphasis on assisting (rather than citing violations and imposing penalties on) plans, plan fiduciaries, financial institutions, and others who are working diligently and in good faith to understand and come into compliance with the fiduciary duty rule and exemptions. Consistent with that approach, the Department has determined that temporary enforcement relief is appropriate and in the interest of plans, plan fiduciaries, plan participants and beneficiaries, IRAs, and IRA owners."

*(ed: \*Wow! We guess Senate Democrats will rest a bit easier. \*\*Interesting that the DOL chose an Op Ed piece as its vehicle to announce its decision to move ahead with the rule. \*\*\*A May FAQ on the transition period can be found [here](#).) (SAC Ref. No. 2017-20-01)*

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