



Temporary Non-Enforcement Policy Issued by the Department of Labor

MAY 8, 2018

Yesterday, in [Field Assistance Bulletin No. 2018-02](#), the Department of Labor's Employee Benefit Security Administration (the Department) issued a temporary non-enforcement policy with regard to the ERISA Fiduciary Rule, the previously issued rule that expanded the definition of who is a "fiduciary" under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (Code); amended the associated prohibited transaction exemptions; and included the creation of the Best Interest Contract Exemption (BIC Exemption). The non-enforcement policy applies to investment advisers who made fiduciary recommendations to ERISA plans, participants, and individual retirement accounts under the previously issued ERISA Fiduciary rule.

The Department states that for the period from June 9, 2017 until after regulations or exemptions or other administrative guidance have been issued, the Department will not pursue prohibited transactions claims against investment advice fiduciaries who are working diligently and in good faith to comply with the impartial conduct standards for transactions that would have been exempted in the BIC Exemption and Principal Transactions Exemption, or treat such fiduciaries as violating the applicable prohibited transaction rules.

This policy is believed to be the result of the March 2018 [Fifth Circuit ruling](#).

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