

## April 15 the (Unofficial) Cutoff for Meetings on Fiduciary Rule

When industry groups have sought to schedule meetings after that date, the Office of Management and Budget has pushed back, according to one industry lawyer. This suggests the DOL could issue the final rule as soon as later this month or May.

By **Beagan Wilcox Volz** | April 10, 2024

The White House appears to be on track for a quick turnaround with the **Department of Labor's** revamped fiduciary rule proposal.

The DOL on March 8 sent the controversial rule proposal to the White House's Office of Management and Budget for review.

That agency, which is tasked in part with making sure that a president's policies and priorities are reflected in final rules, seems to be targeting April 15 as the last day of meetings with stakeholders about the draft regulation, according to **Bradford Campbell**, partner at **Faegre Drinker**.

## Pencil Us In

Below is the Office of Management and Budget's agenda for meetings to discuss the DOL's proposed fiduciary rule. These are the meetings that have been held — or are scheduled to be held — since the OMB received the draft rule for review on March 8.

Date	Who requested the meeting
4/15/2024	Davis & Harman
4/12/2024	Alternative & Direct Investment Securities Association
4/10/2024	Financial Services Institute
4/10/2024	American Bankers Association
4/10/2024	National Association of Insurance and Financial Advisors
4/9/2024	U.S. Chamber of Commerce
4/9/2024	American Council of Life Insurers
4/9/2024	Finseca
4/8/2024	Investment Company Institute
4/8/2024	Insured Retirement Institute
4/5/2024	WTW
4/5/2024	Securities Industry and Financial Markets Association
4/5/2024	National Association for Fixed Annuities
4/4/2024	American Benefits Council
4/4/2024	Senate Committee on Health, Education, Labor and Pensions
4/2/2024	Certified Financial Planners Board
3/26/2024	Sen. Catherine Cortez Masto
3/26/2024	Sen. John Fetterman
3/25/2024	Groom Law Group
3/22/2024	AARP, Consumer Federation of America and others

Source: Regulatory filings

"I know meetings have been requested for later in April and OMB schedulers have asked for those to occur by April 15," said Campbell, who met Tuesday with DOL and OMB officials on behalf of a client. "It is possible they will add meetings, but probably by April 15, the meetings will be done."

This means that the final rule could come as soon as later this month or May, Campbell said.

"That's kind of our assumption based on what we've seen" and "the unusual pace" with which the DOL has proceeded with the rulemaking, he said.

The OMB has a meeting on its agenda for April 15 with law firm **Davis Harman**, but as of Tuesday afternoon no meetings are scheduled for after that date.

An OMB spokesperson declined to comment, citing the agency's policy of not discussing rules under review.

The OMB doesn't simply rubber-stamp rules, however, said **Andrew Oringer**, partner at **Wagner Law Group**.

The agency will engage, particularly on difficult initiatives such as the fiduciary rule, he said.

The DOL floated the proposed rule in late October.

It would dramatically expand the definition of "investment advice fiduciary," most notably by including those who make a one-time recommendation for rolling assets from defined contribution retirement plans into individual retirement accounts.

The agency allowed for a 60-day public comment period and declined industry requests for a longer time frame.

The DOL held a two-day public hearing on the rule proposal in mid-December, before the deadline for comments, which industry executives said was unprecedented.

After the Jan. 2 comment deadline, the agency took roughly 66 days to comb through comments before submitting the rule to the OMB for review, Campbell said.

The DOL received more than 400 comment letters, some of which are hundreds of pages long.

"To me, it's all a hallmark of a predetermined outcome, where the agency is pushing an outcome and going through the motions of notice and rulemaking," Campbell said.

The precise deadline for finalizing agency rules so that they can't be undone by the Congressional Review Act hinges on when Congress is in session for the remainder of 2024, but it will probably be around June, **Michael Kreps**, partner at **Groom**, told Ignites last month.

The possibility of a final fiduciary rule being killed by Congress is most likely if there is a change of presidential administration.

The DOL's final fiduciary rule – whenever it is issued – will face legal challenges, and the agency has been working to "litigation-proof" it all along, said **Jason Roberts**, chief executive officer of the **Pension Resource Institute**.

Still, the agency is likely to tweak the proposal to address specific points that the industry raised in the rulemaking process, he said.

An appellate court struck down the agency's 2016 fiduciary rule in March 2018. The appeals court found that the agency exceeded its authority and violated the Administrative Procedure Act with its rule.

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