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DOL Obtains Further Extension to Decide Whether to Fight for the Fiduciary Rule

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In a motion filed on April 14, 2025, the Department of Labor requested that the 5th Circuit Court of Appeals grant it an additional 60-day delay to decide its next steps with respect to its appeals of two July 2024 decisions from the U.S. District Courts in the Northern and Eastern Districts of Texas staying the effective date of the latest iteration of its Retirement Security Rule finalized in April 2024 (the "Fiduciary Rule"). For additional background on the Fiduciary Rule and related Prohibited Transaction Exemptions ("PTEs"), see our recent Blog Post and Legal Alert.

The DOL filed notices of appeal for both cases in September 2024, with a full appeal to the 5th Circuit pending. It was previously granted a 60-day abeyance in February, which was set to expire on April 15, 2025. On April 15, 2025, U.S. Circuit Judge Catharina Haynes of the 5th Circuit, granted the DOL's unopposed motion to extend the existing abeyance for an additional 60 days to June 16, 2025.

The extension gives the DOL more time to consider how to reply to appeals in the two cases, which have been consolidated.

Background

As described in our earlier Blog Post, the two U.S. District Court Cases, *American Council of Life Insurers v. DOL* and *Federation of Americans for Consumer Choice Inc. et al. v. DOL et al*. imposed national stays of the September 23rd effective date of the Fiduciary Rule and its amendments to several PTEs.

In both lawsuits, plaintiffs sought to block the Fiduciary Rule arguing that the DOL exceeded its authority under federal law, and that the Fiduciary Rule is "arbitrary and capricious" and has the "same legal defects" as the 2016 version of the fiduciary rule (the "2016 Rule") that was eventually struck down by the 5th Circuit in 2018.

The first Trump administration defended the 2016 Rule before the 5th Circuit in July 2017, but after the three-judge panel ruled against the DOL, the administration elected not to appeal the decision and the 2016 Rule was vacated and the 5-Part Test first articulated in 1975 was reinstated.

Then, under the Biden administration, the DOL finalized the Fiduciary Rule, which was more narrowly tailored than the 2016 Rule to address the 5th Circuit’s concerns. It is still uncertain whether the second Trump administration will direct its Justice Department to defend the Fiduciary Rule in the 5th Circuit or to act consistently with its approach to the 2016 Rule by not defending the rule, in which case the 5-Part Test may again be revived.