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Effective Date of DOL's Final Investment Advice Rule and Amended PTEs Paused

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Federal District Courts in the Eastern and Northern districts of Texas issued orders on July 25th July 26th, respectively, staying the effective date of the Department of Labor's final regulation on its "fiduciary rule," including its amendments to several prohibited transaction class exemptions ("PTEs"). These orders apply nationwide, and not just to the plaintiffs in the two cases before the Texas district courts.

The final regulation for the DOL's fiduciary rule, and amendments to PTE 2020-02, PTE 84-24, and PTEs 75-1, 77-4, 80-83, 83-1, and 86-128, were published in the Federal Register on April 25, 2024, and were set to be effective on September 23, 2024 (with a longer phase in period for some of the changes to PTE 2020-02 and PTE 84-24). Please see our recent Blog Post and Legal Alert for a description of the key provisions in the DOL's updated fiduciary rule.

Shortly after the updated fiduciary rule and PTE amendments were published, two groups representing interested parties in the insurance industry filed lawsuits in May to block the rule. These groups, the Federation of Americans for Consumer Choice (FACC) and the American Council of Life Insurers (ACLI), argued that the updated fiduciary rule conflicts with ERISA, and that they would be harmed if they were required to comply with the fiduciary rule while their lawsuits are pending because they would face significant compliance burdens, potential ERISA liability, and potential DOL enforcement actions.

In particular, FACC claimed that the DOL exceeded its rulemaking authority under the Administrative Procedures Act and acted arbitrarily and capriciously with respect to its amendments to PTE 84-24. FACC sought, among other things, a stay of the fiduciary rule's and amended PTE 84-24's effective date or preliminary injunction. ACLI likewise claimed that the fiduciary rule violated ERISA and the Fifth Circuit's 2018 decision overturning an earlier DOL attempt to update the definition of an "investment advice fiduciary" and was arbitrary and capricious. Like FACC, ACLI sought, among other relief, a preliminary or permanent injunction of the fiduciary rule (including the amendments to the PTEs) or a stay of the effective date of the fiduciary rule and PTE amendments.

Judge Kernodle of the Eastern District of Texas issued an order staying the effective date of the fiduciary rule and amended PTE 84-24 based on reasoning that FACC and the other plaintiffs were likely to succeed on the merits of their lawsuit and could suffer irreparable harm if the effective date of the fiduciary rule and amended PTE 84-24 were not stayed. In reaching this conclusion, Judge Kernodle applied the U.S. Supreme Court's

decision overruling the “Chevron Deference” (Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024)). The next day, Judge O’Conner of the Northern District of Texas issued an order agreeing with Judge Kernodle’s analysis in the FACC case and extended the stay to the other PTE amendments that were published on April 25, 2024 (including the amendments to PTE 2020-02).

Practically, until these cases work their way through the federal courts, the DOL’s fiduciary rule is on hold and the five-part test in the DOL’s 1975 rule remains in effect.