



Eye On Washington

Legislative Update



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DOL Fiduciary Rule Post Mortem

In March 2018, the United States Court of Appeals for the Fifth Circuit ruled that the U.S. Department of Labor (DOL) had overstepped its authority by issuing the Fiduciary Investment Advice Rule (DOL Fiduciary Rule) that required financial professionals to put their customers' interests first – ahead of their own. On June 21, 2018, the Fifth Circuit completed the final procedural step by mandating that the DOL Fiduciary Rule be vacated in its entirety.

What does this mean? The DOL Fiduciary Rule and related regulatory exemptions – such as the Best Interest Contract Exemption, that partially went into effect on June 9, 2017 – are null and void (i.e., treated as if they never existed). The less stringent five-part DOL regulation on investment advice, in effect prior to the DOL Fiduciary Rule, is available as guidance to interpret investment advice issues under ERISA, both retroactively to June 9, 2017, and on a going-forward basis.

The Securities and Exchange Commission (SEC) is now expected to lead any effort to reform investment advice standards. Ahead of the Fifth Circuit's final order to vacate the DOL Fiduciary Rule, the SEC released its own advice-reform package for advisors. The SEC's proposed reforms include conflict-of-interest and best-interest standards, applicable to brokers for their retail customers. This proposal is currently open for public comment until August 7, 2018. The industry expects a vigorous discussion and many twists and turns before the SEC rule is finalized.

Retirement Plan Industry Response

To comply with the DOL Fiduciary Rule, financial firms and service providers across the board had to develop a compliance approach often involving new or modified products, sales processes and compensation methods. Opponents of the DOL Fiduciary Rule argued that the Rule was unworkable and forced the industry to reduce the breadth of its product offerings and client base. Proponents of the DOL Fiduciary Rule believed that the Rule pushed the client's best interests to the forefront of the customer-advisor conversation and had the practical effect of edging the industry to lower fees.

Others maintain that compliance with the DOL Fiduciary Rule was just too costly.

Since the demise of the DOL Fiduciary Rule, the industry appears unwilling to completely abandon a fiduciary standard. This may be due to the heavy investment in the compliance effort to meet fiduciary obligations and wide adoption of the regulation as the new standard. However, more changes in the industry are expected in light of the regulatory rollback. The decision by the Fifth Circuit may have a chilling effect in states that have taken steps to enact (or enforce) their own fiduciary investment advice reform measures.



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Despite its short life, the DOL Fiduciary Rule will likely continue to exert influence over how investment advice is delivered. Firms that eliminated or mitigated identified conflicts of interests will likely not resume the old practices. Further, the DOL Fiduciary Rule may have made the industry stronger and more resilient going forward. For instance, one of the changes ADP® Retirement Services made to comply with the DOL Fiduciary Rule was to introduce independent fiduciary investment advice services through a new, registered investment advisor, ADP Strategic Plan

Services. The new service has been well received in the marketplace and appears to have addressed a palpable market need.

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