

Update: Fiduciary Rule Changes, Again

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Regular readers will remember that we wrote in July about the final fiduciary rule, released by the Department of Labor (DOL) in April of this year. The rule finalized a new definition of who qualifies as an investment advice fiduciary and what those individuals must do in order to receive a fee for providing that advice. Shortly after publication of that article, the United States District Court for the Eastern District of Texas issued an order staying the fiduciary rule and blocking the DOL from implementing and enforcing the rule.¹ A similar ruling came down the following day in the Northern District of Texas.² The only constant is change...right?

What does this mean? The final fiduciary rule — as discussed in our July article — will *not* go into effect on September 23rd as provided in DOL's final regulation.

So, where does this leave us? This will almost assuredly be appealed to the Fifth Circuit Court of Appeals and, depending on that outcome, potentially to the United States Supreme Court. In the meantime, advisors should continue to follow the fiduciary rules in effect before this final rule and may consider continuing to implement changes that would have been required.

The good news for advisors is that they do not need to change their current procedures to meet a new standard. More specifically, advisors do *not* need to implement compliance procedures for the expanded list of services that would have been considered fiduciary investment advice. The final rule generally would have expanded this to include not only "traditional" types of investment advice (such as recommending particular securities or investment strategies) but also investment advice for things like the advisability of rollovers, the investment of plan assets after a distribution, and the selection of other persons to provide investment advice or management services.

While we wait for a resolution in the courts, advisors would be well-served to take stock of current fiduciary practices. Have any procedures been changed in anticipation of the final rule's effective date that should now be amended again? The procedures that would have been required by the final rule may still eventually be required, therefore some advisors may wish to consider moving forward with implementation of some or all of those procedures, even if they are only a best practice in the interim. The fiduciary rule is complex, and advisors should continue to ensure continued compliance with ERISA.



To Be Continued

Reminders

- **October 2, 2024:** Beginning of the period to distribute annual notices to participants for calendar year plans (e.g., safe harbor notices, ACA notices, QACA, QDIA notices). These are generally required to be distributed from 90 to 30 days before the end of the plan year.
- **October 15, 2024:** Deadline for filing retroactive amendment to correct Code Section 410(b) or 401(a)(4) failures.
- **October 15, 2024:** Deadline for filing Form 5500 for calendar year plans that filed a Form 5558 extension request.

¹*Federation of Americans for Consumer Choice, Inc., et. al. v. United States Department of Labor*, E.D. Tex., No. 6:24-cv-163-JDK, 7/25/24.

²*American Council of Life Insurers v. United States Department of Labor*, N.D. Tex., No. 4:24-cv-00482, 7/26/24.