

Fiduciary Rule Vacated by 5th Circuit Court of Appeals

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What You Need To Know:

- On March 15, the U.S. Court of Appeals for the 5th Circuit vacated the U.S. Department of Labor's (DOL's) regulation regarding who is considered a fiduciary under ERISA (the Fiduciary Rule). The 5th Circuit's decision casts new uncertainty on the nascent Fiduciary Rule.

As we have previously reported ([see our May 9, 2017 Client Alert](#)), the Fiduciary Rule went into effect on June 9, 2017, though the effectiveness of certain provisions was delayed until July 1, 2019, pending a review of the Fiduciary Rule ordered by President Donald Trump.

Two recent, and conflicting, U.S. Court of Appeals decisions raise questions about whether the Fiduciary Rule will survive. On March 15, the Court of Appeals for the 5th Circuit in a 2-1 decision held that the DOL exceeded its legal authority in establishing the Fiduciary Rule and vacated the Fiduciary Rule in its entirety. The majority found that the DOL expanded the definition of "investment advice fiduciary" beyond the intent of Congress. The 5th Circuit's decision created a split with the Court of Appeals for the 10th Circuit, which just days earlier unanimously upheld a portion of the Fiduciary Rule.

It is uncertain what actions the DOL will take in response to the split decisions described above. For instance, the DOL could request a review of the three-judge panel by the 5th Circuit en banc (meaning by the entire body of judges of the 5th Circuit), or the DOL could seek an appeal to the U.S. Supreme Court. The DOL has not yet publicly indicated what course it will pursue, if any. If the DOL fails to challenge or otherwise seek a stay of the 5th Circuit's decision, the Fiduciary Rule will be vacated effective May 7.

Until the ultimate fate of the Fiduciary Rule is known, advisors, fund managers, and others impacted by the Fiduciary Rule should continue to adhere to practices and procedures put in place to comply with the Fiduciary Rule and not take precipitous action. The next leg in the journey of the Fiduciary Rule should reveal itself soon. We will continue to monitor and report on developments.

Contacts

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