

Employee Benefits and ERISA Alert

March 19, 2018

Fifth Circuit Court of Appeals Vacates DOL Fiduciary Rule

On March 15, 2018, the U.S. Court of Appeals for the Fifth Circuit ruled, in a 2-to-1 decision,¹ that the U.S. Department of Labor (DOL) abused its authority and acted unreasonably in promulgating its 2016 fiduciary rule and related exemptions. Accordingly, the Fifth Circuit Court reversed a 2016 Texas district court decision and vacated the fiduciary rule and related exemptions in their entirety.

We note that the Fifth Circuit Court's decision is binding only in the Fifth Circuit (which includes Texas, Louisiana and Mississippi), and, thus far, courts in other jurisdictions have upheld the fiduciary rule. In fact, just a few days before the Fifth Circuit Court's decision, the Tenth Circuit Court of Appeals issued a unanimous decision upholding the fiduciary rule.²

Thus, there is a great deal of uncertainty surrounding the future of the fiduciary rule. For example, it is unclear if the DOL will continue to defend the fiduciary rule (e.g., either by asking the Fifth Circuit to reconsider its decision or appealing the decision to the U.S. Supreme Court). If the case is appealed to the Supreme Court, it is uncertain if the Supreme Court will agree to hear the case. Moreover, it is possible that the Securities and Exchange Commission will issue its own fiduciary rule (as it has suggested) or that states will establish their own fiduciary rules. New York, for example, recently proposed fiduciary standards governing sales of life insurance and annuity products.

We will continue to monitor developments affecting the fiduciary rule and will keep you informed of any such developments.

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¹ *Chamber of Commerce of the United States of America, et al. v. United States Department of Labor*, 2018 U.S. App. LEXIS 6472 (5th Cir. 2018).

² *Market Synergy Group, Inc. v. United States Department of Labor, et al.*, 2018 U.S. App. LEXIS 6209 (10th Cir. 2018).