

Memorandum

DOL Releases New Guidance Extending Enforcement Relief Policy Regarding Fiduciary Rule

May 9, 2018

On May 7, 2018, the Department of Labor (the “DOL”) released [new guidance](#) further extending its temporary enforcement policy regarding the “fiduciary rule” in light of the mandate expected to be issued by the U.S. Court of Appeals for the Fifth Circuit within the next couple days vacating the fiduciary rule in accordance with its March 15, 2018 decision. Our prior client alert discussing the Fifth Circuit’s recent decision and referencing our prior client alerts regarding the fiduciary rule can be found [here](#).

The DOL’s new guidance, along with the Fifth Circuit’s anticipated issuance of the mandate, comes on the heels of the Fifth Circuit’s decision on May 2, 2018 to deny motions by the AARP and various states to intervene in the case. While the Fifth Circuit’s decision finding that the DOL lacked the statutory authority to promulgate the fiduciary rule remains subject to potential appeal to the U.S. Supreme Court until June 13, 2018, it seems unlikely that the U.S. government will further appeal the case in light of the DOL’s prior pronouncements regarding the fiduciary rule under direction from the Trump Administration.

While the Fifth Circuit’s vacating order appears to have effectively invalidated the fiduciary rule in all jurisdictions (not merely in states covered by the Fifth Circuit), the DOL’s new guidance permits investment advice fiduciaries to continue to comply in good faith with the impartial conduct standards under the BIC Exemption and the Principal Transactions Exemption (or to comply with other applicable prohibited transaction exemptions) pending the issuance of future exemptions, regulations or guidance by the DOL.

Since it is unclear at this time whether the DOL’s next step will be to issue a revised version of the fiduciary rule, revert to the status quo ante prior to the original issuance of the fiduciary rule regulations, or promulgate some kind of variation of the foregoing, clients that have been attempting to comply with the fiduciary rule may find the most prudent course of action is to continue to do so, at least for the time being pending further guidance. We will continue to monitor further developments in this area.

For further information regarding the DOL's fiduciary rule and related prohibited transaction exemptions, please contact a member of the Firm's Executive Compensation and Employee Benefits Practice Group.

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