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5th Circuit Officially Mandates Decision to Vacate DOL Fiduciary Rule, ft. Brendan McGarry

KD attorneyBrendan P. McGarry was quoted in a recent article on Plansponsor.com.

News emerged Thursday that the 5th U.S. Circuit Court of Appeals has issued a final mandate certifying its mid-March decisionin a case that has now successfully derailed the Department of Labor's (DOL) long-running effort to expand the definition of fiduciary advice under the Employee Retirement Income Security Act (ERISA).

Industry stakeholders immediately offered their thoughts on the complex regulatory saga that started early in the administration of Barack Obama. Depending on their position in the industry and their particular business model and client service philosophy, some are hailing this step as a victory, while others are bemoaning it. All agree, however, that this is an important day for the future of defined contribution retirement plans.

As it turns out, the Obama administration's gamble to leave the implementation of the fiduciary rulemaking to the next president was not in the end what actually killed the regulations. It was instead a series of arguments put forward by the U.S Chamber of Commerce and the Securities Industries and Financial Markets Association, alleging that DOL had overstepped the bounds of its authority in promulgating the expansive new set of rules. Fascinating in hindsight, the arguments failed flatly in the initial district court trial, but that's all history now.

The issuance of the 5th Circuit mandate leaves the Securities and Exchange Commission (SEC) in the driver's seat when it comes to the issuance of any new conflict of interest regulations that could impact the retirement planning marketplace. In fact, as observed by Brendan McGarry, an attorney with Kaufman Dolowich & Voluck who represents broker/dealers, registered investment advisers and other financial institutions, the SEC is now under some amount of pressure to pick up the slack created by the ruling/mandate.

"Obviously, this focuses the issues regarding standards applicable to broker/dealers and other investment advice providers squarely on the SEC's current rule proposals," he tells PLANSPONSOR. "It remains to be seen whether the DOL will go back to the drawing board another time, wait to see what the final SEC Rules look like, or both."

Importantly, the comment period for the SEC proposals is open for another month and a half. McGarry says it will be "interesting to see if this mandate has an effect on the comments being submitted and/or the eventual SEC Rules enacted—assuming that any final rules are enacted."

A more disappointed note was struck in preliminary commentary shared by Jon Stein, the CEO of Betterment for Business: "Today's decision is to kill the fiduciary rule is upsetting. We were hopeful for a different outcome and, while not surprised at the ruling, we are still disappointed about the negative impact it will have in the immediate and long term. It's a sad day for not only those of us in the industry that have fought hard against this, but also—and more so—America's 75 million hard-working retirement savers."

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