

Fifth Circuit Vacates Department of Labor's Fiduciary Rule

Skadden

03 / 20 / 18

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Michael D. Dorum

Partner / New York
212.735.3595
michael.dorum@skadden.com

Jeffrey A. Lieberman

Counsel / New York
212.735.2734
jeffrey.lieberman@skadden.com

On March 15, 2018, in a 2-1 decision, the U.S. Court of Appeals for the Fifth Circuit vacated entirely the conflict of interest regulation of the Department of Labor (DOL) and its related prohibited transaction exemptions (the so-called fiduciary rule).

The court held that the DOL had exceeded its authority in issuing the fiduciary rule, including in how it affects individual retirement accounts. It is not yet clear if the DOL (or another party) will challenge the ruling, which could include appealing to the U.S. Supreme Court. The Fifth Circuit decision follows several rulings in other courts affirming, at least in part, the fiduciary rule. Meanwhile, the DOL has been reviewing the fiduciary rule pursuant to President Donald Trump's direction to do so last year. (See our February 6, 2017, client alert "[Trump Directs the Department of Labor to Review Fiduciary Rule.](#)") DOL spokespersons have indicated that, at least for the moment, the DOL will not enforce the fiduciary rule.

As described in our December 5, 2017, client alert "[The Department of Labor Extends Transition Period for Exemptions Under the Fiduciary Rule.](#)" the DOL previously provided a transition period until July 2019 for certain applicable exemptions and also adopted a nonenforcement policy during such period for parties attempting in good faith to comply with the fiduciary rule. The Fifth Circuit decision also comes as the Securities and Exchange Commission (SEC) is developing its own "best interest" conduct rules, although the SEC has not yet published any proposal. Unlike the fiduciary rule, any such SEC rule would presumably apply more broadly than only to retirement plans and arrangements.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

Four Times Square
New York, NY 10036
212.735.3000

skadden.com