EDUCATION

DOL Fiduciary Rule Still in Limbo After Latest Court Ruling

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The US Department of Labor's (DOL) Fiduciary Rule has been the subject of much debate, and still remains largely in limbo as it works its way through the court system. The rule, which expands the scope of persons deemed to be a fiduciary, was to go into effect in January 2018, but full implementation was delayed. A panel of our experts, Daniel O'Lear, Yaqub Ahmed, Drew Carrington and Michael Doshier, give the latest update on where things stand today after a key appeals court ruling this month.

Latest Court Rulings

Back in 2010, the US Department of Labor (DOL) proposed to significantly expand the scope of persons deemed to be a fiduciary with a new rule aimed at protecting consumers. The intent of the new "DOL Rule" was to ensure financial advisors put their clients' interests above their own financial interests. The rule was supposed to be fully implemented on January 1, 2018, but has faced a series of delays and court battles.

On March 15, 2018, the United States Court of Appeals for the Fifth Circuit vacated in its entirety the DOL rule (also called the "conflict of interest rule") on *Chamber of Commerce of the United States of America, et al. v. U.S. Department of Labor, et al.*, by a 2-1 vote. The decision was based on the arguments by the US Chamber of Commerce, the Financial Services Institute and the Securities Industries and Financial Markets Association (SIFMA) that the DOL had overreached in its authority in creating such a rule.

The impact of the future of the rule is still unclear, especially given only days earlier (March 13), the Tenth Circuit ruled against Market Synergy Group, which recently lost two lawsuits in the US District Court arguing against the expanded fiduciary definition. Unlike the Fifth Circuit ruling that related to the entirety of the rule, though, the Tenth Circuit ruling was much narrower in scope.

Where Does This Leave Us Today?

So, what does the latest court judgment mean? Whether there is a specific date when the rule is no longer in effect depends largely on what the DOL decides to do next. One possibility is for the DOL to appeal to the Fifth Circuit and then ultimately the US Supreme Court or request a panel or en banc rehearing to the original judges or entire circuit, respectively. On the other hand, the DOL may let the Fifth Circuit ruling stand, effectively overturning the rule as soon as early May.

In addition, if the DOL does not appeal, technically an outside party that has been an advocate for the rule could seek an appeal of the Fifth Circuit decision. There has been some speculation that if the decision stands, it would might only be vacated in the Fifth Circuit, which is comprised of parts of Texas, Louisiana and Mississippi. Most legal experts we have engaged believe it would abolish the rule nationally given the DOL's jurisdiction. One thing we do know for now—the DOL has suspended enforcement of the rule until it determines how to proceed.

Separately, the Securities and Exchange Commission (SEC) is expected to release a proposed uniform fiduciary standard by fall of this year. Either way, the White House and the president's newly appointed National Economic Advisor will likely weigh in—a team with stark policy differences than the one in place when the rule was first published.

In the meantime, recent court activity appears to be creating more uncertainty around the future of the rule than ever. Most financial institutions have adjusted business practices to mitigate litigation risk and moved to a model in which they are in compliance, so would be far from simple to unravel what's already been done. Impacted parties will certainly be watching closely to see how this plays out. In any case, we believe professional advice in preparing financially for retirement remains very important.

The ultimate outcome of this rule will undoubtedly impact how investors get financial advice. As a firm, we at Franklin Templeton believe those offering advice should always conduct themselves in the highest standard and act in the best interest of their clients. We are following these developments closely and working with others in the industry to find the right answers and continue doing what is right for our clients.

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