SEYFARTH SHAW

One Minute Memo®

DOL Fiduciary Rule Officially Dead

By Diane Dygert, Linda Haynes, and Jennifer Neilsson

For several years now we've been keeping you updated on the long and winding road of the Department of Labor's ("DOL") Fiduciary Rule. See our alert here. The DOL finally issued their long-awaited and controversial Fiduciary Rule in the waning days of the prior administration. As the Fiduciary Rule was set to go in effect on April 10, 2017, the new administration delayed it until June 9, 2017, and the companion exemptions (i.e., the Best Interest Contract Exemption and the Principal Contract Exemption) were delayed throughout the remainder of that year. See our alerts here and here.

While those impacted were actively planning for compliance, the Fiduciary Rule faced numerous court challenges. The critics of the rule eventually found a sympathetic court in the Fifth Circuit, where a divided panel issued a decision vacating the rule this past March. See our alert here. After the existing administration indicated that it would not challenge the court's decision, several interested parties, including the AARP and various state attorneys general, unsuccessfully tried to intervene to save the Fiduciary Rule. The DOL then announced that it would not enforce the Fiduciary Rule in anticipation of the Fifth Circuit's final determination. See our alert here.

The Fiduciary Rule defined who is a fiduciary under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") by reason of providing investment advice for a fee to ERISA plans. Notably, the proposed new fiduciary definition could have resulted in IRA providers and brokers being fiduciaries.

That final death knell came on Thursday, June 21, 2018, when the Fifth Circuit issued a mandate officially vacating the rule three months after its original invalidation. Although the Fiduciary Rule is no longer applicable, the Securities and Exchange Commission ("SEC") has proposed new rules for investment advisors and brokers, as we mentioned in our May 8th alert.

Diane Dygert, Linda Haynes, and Jennifer Neilsson are partners in Seyfarth Shaw's Chicago office. If you have any questions, please contact Diane Dygert at ddygert@seyfarth.com, Linda Haynes at lhaynes@seyfarth.com, or Jennifer Neilsson at jneilsson@seyfarth.com.