

Employee Benefit Plan Review

Texas Courts Halt U.S. Department of Labor's Fiduciary Rulemaking Package

BY KATRINA L. BERISHAJ

Two federal district courts in Texas have stayed the September 23, 2024, effective date of the U.S. Department of Labor's (DOL) fiduciary rulemaking package, including the new definition of fiduciary and amendments to various prohibited transaction exemptions (PTEs).

Soon after the fiduciary rulemaking package was published earlier this year, two lawsuits were filed in Texas to vacate various components of the rulemaking.

THE CASES

In *Federation of Americans for Consumer Choice v. U.S. Department of Labor*,¹ the Federation of Americans for Consumer Choice (FACC) sued in the U.S. District Court for the Eastern District of Texas to vacate the fiduciary rule and amendments to PTE 84-24 (applicable to transactions involving insurance products, insurance agents, pension consultants and investment company principal underwriters).

In *American Council of Life Insurers v. U.S. Department of Labor*,² the American Council of Life Insurers (ACLI) sued in the U.S. District Court for the Northern District of Texas to vacate the entire rulemaking, including the new fiduciary rule and amendments to:

- PTE 84-24 and PTE 2020-02 (applicable to the receipt of compensation in connection with the provision of investment advice and to certain principal transactions);
- PTE 77-4 (applicable to purchases and sales of open-end registered investment companies);
- PTE 86-128 (applicable to commissions paid to an affiliate of a plan fiduciary);
- PTE 80-83 (relating to purchases of securities where the issuer may use the proceeds to reduce or retire indebtedness);
- PTE 83-1 (relating to mortgage pool investment trusts); and
- PTE 75-1 (applicable to certain securities transactions).

THE DECISIONS

On July 25 and 26, the two district courts issued stays on the effective date of the fiduciary rulemaking package. Both courts found that the challenges to the rulemaking package were likely to succeed on the merits because the rulemaking exceeds the DOL's authority and is not consistent with the U.S. Court of Appeals for the Fifth Circuit's decision in *Chamber of Commerce v. U.S. Department of Labor*,³

which vacated the DOL's 2016 fiduciary rulemaking.

The DOL is likely to appeal these decisions. There is also a pending congressional resolution to block the rule⁴ under the Congressional Review Act, which was most recently passed by the House Committee on Education and the Workforce.

KEY TAKEAWAYS

- For now, September 23 is no longer the compliance date for the new fiduciary rule and amendments to the PTEs. Firms should consider how this impacts any plans to rely on the PTEs, including, for example, the expanded relief that the amendments would

have provided for all principal trades under PTE 2020-02.

- The five-part test and pre-amendment PTEs remain in effect until further judicial determination.
- Both courts indicated that broader challenges to vacate the rulemaking package entirely are likely to succeed, so the new rules may never go into effect. 🌟

NOTES

1. Federation of Americans for Consumer Choice v. U.S. Department of Labor, No. 6:24-cv-163-JDK (E.D. Tex. Jul. 25, 2024).
2. American Council of Life Insurers v. U.S. Department of Labor, No. 4:24-cv-00482-O (N.D. Tex. Jul. 26, 2024).
3. Chamber of Commerce v. U.S. Department of Labor, 885 F.3d 360, 379, 381 (5th Cir. 2018).

4. https://allen.house.gov/uploadedfiles/fiduciary_cra_xml.pdf.

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