



ACLI Files Brief Supporting Lawsuit Fighting US Labor Department's Investment Advice Rule

- By [Timothy Darragh](#)
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WASHINGTON //BestWire// - The American Council of Life Insurers has filed an amicus brief supporting a lawsuit seeking to overturn the U.S. Department of Labor's investment advice rule regarding the definition of fiduciary.

The rule, if allowed to stand, would achieve the same functional outcome sought by a 2016 fiduciary rule that the Fifth Circuit Court rejected and invalidated, the ACLI said in its brief.

The DOL regulation, which took effect early this year, would expand the department's oversight of those who advise consumers about retirement products such as individual retirement accounts.

According to the lawsuit supported by the ACLI and filed by the Federation of Americans for Consumer Choice, the department's "newly devised interpretation of who will be categorized as an investment advice fiduciary... carries forward the core problem the Fifth Circuit identified in vacating the Fiduciary Rule the first time: DOL's impermissible effort to rewrite and expand the definition of a fiduciary under (the Employee Retirement Income Security Act) and the (Internal Revenue) Code," the lawsuit said ([BestWire, Feb. 4, 2022](#)).

The ACLI in its brief said under the DOL's interpretation of the regulation, investment sales professionals are deemed to function as investment advice fiduciaries even in the absence of a relationship with an ERISA plan or participant, as long as there is "an intended future ongoing relationship."

The DOL improperly conflates the "beginning of an ongoing relationship" with one that has been established and is separate from the proposed transaction, the ACLI said. The Fifth Circuit also said fiduciary status under federal law would require more than a simple buyer-seller relationship, it said.

The definition of fiduciary was a settled matter for about 35 years before the DOL in 2016 issued new regulations redefining how insurance companies and financial service providers would be regulated. That led to the Fifth Circuit decision returning the issue to its pre-2016 status.

But the DOL said in a filing this month it did not revive any of the elements of the 2016 Rule that the Fifth Circuit invalidated.

The federation took “extreme” interpretations of the Fifth Circuit’s ruling, it said, such as arguing a fiduciary relationship cannot arise from the interactions surrounding the first instance of investment advice.

The driving force is the federation’s and life insurer’s “desire to make recommendations to roll assets out of ERISA-covered plans entirely free from fiduciary responsibility,” it said.

But the ACLI said the DOL’s position simply is not in line with the court’s.

“DOL cannot interpret its own regulations in a manner that is inconsistent with what the Fifth Circuit determined was unambiguous statutory text,” it said.

It is not known when the court will rule on the federation’s motion to block the DOL’s interpretation of the investment advice rule.

Attempts to obtain further comment from the ACLI and the department were not immediately successful.

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