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5th Circuit Ruling Leaves DOL's Fiduciary Rule in Limbo, SHRM News, ft. Brendan McGarry

Brendan P. McGarry, attorney in the Kaufman Dolowich & Voluck Chicago office, was quoted in an article by Stephen Miller published in *SHRM News.*

Plan sponsors should stay vigilent regarding conflicted investment advice

When the Dallas-based 5th Circuit Court of Appeals struck down the Department of Labor's (DOL's) controversial fiduciary rule on March 15, just two days after the Denver-based 10th Circuit upheld the same rule, it created a split among the circuits. As a result, the U.S. Supreme Court may eventually decide the rule's fate. In the meantime, President Donald Trump's administration continues to review its options.

"Pending further review, the [Labor Department] will not be enforcing the 2016 fiduciary rule," a DOL spokesman said in a statement to CNBC.

Prior to the court decisions, Labor Secretary Alexander Acosta said that the DOL was considering public input about revising the regulation and, if necessary, will propose changes in consultation with the Securities and Exchange Commission and other regulators.

However, unless the fiduciary rule is definitively repealed or replaced, employers that sponsor 401(k) and similar defined contribution plans should continue to take it seriously and closely monitor their vendor arrangements, benefits advisors said.

The 5th Circuit's majority opinion "uses terms like 'burdensome' and 'onerous' to describe the requirements placed on financial industry participants," said Brendan McGarry, an attorney at Kaufman Dolowich & Voluck in Chicago who advises broker dealers and advisors. "Opponents of the rule will likely hail this as a resounding victory…. It will be interesting to see if the DOL tries to appeal this decision, given the change in leadership since the rule was implemented."

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