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A Presidential Memorandum, A 60-Day Delay, Even a New Field Assistance Bulletin: What's Next for DOL's Fiduciary Rule?

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Perhaps no issue better represents the regulatory uncertainty that can follow a political regime change than the US Department of Labor's (DOL) Fiduciary Rule.[1] Followers of the Fiduciary Rule have endured an extraordinary degree of activity in recent months. Plaintiffs in private party litigation brought in United States District Courts across the country challenging the Fiduciary Rule have been shut out at the lower court level, with DOL so far amassing a perfect record. At the same time, the fate of the Fiduciary Rule under the new administration came under increasingly intense speculation. Some relief for the industry arrived on February 3, 2017, when the White House released a presidential memorandum (Presidential Memorandum)[2] directing DOL to examine the Fiduciary Rule's economic and legal underpinnings. DOL has since announced a 60-day delay in the implementation date and issued guidance on a temporary nonenforcement policy.[3] Congress has even joined the fray, with one proposal pending that would delay the implementation date by two years.[4]

In this article, we distill the recent developments and provide an outlook on the Fiduciary Rule's current status and where it might be headed.

Presidential Memorandum and DOL's Response

The Presidential Memorandum. The February 3, 2017 Presidential Memorandum ordered DOL to reconsider the Fiduciary Rule and prepare an updated economic and legal analysis that must at least consider whether the Fiduciary Rule will cause: (i) potential harm to investor access to certain retirement savings products or financial advice; (ii) dislocations or disruptions within the retirement services industry that may harm investors; or (iii) an increase in litigation and an increase in costs to investors for access to retirement services.[5] If DOL determines that it will cause any of those three results or if DOL concludes that it is inconsistent with stated Trump Administration priorities—empowering Americans to make their own financial decisions to facilitate their ability to save for retirement, build their individual wealth, and withstand unexpected financial emergencies—the Presidential Memorandum instructs DOL to issue a proposed rule rescinding or revising the final conflict of interest regulation.[6] DOL's same-day response to the Presidential Memorandum was a terse one-liner:

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"The Department of Labor will now consider its legal options to delay the applicability date as we comply with the President's memorandum."[7]

Perhaps more interesting than the content included in the Presidential Memorandum is the content that was *excluded*. An earlier draft included several provisions that were noticeably absent from the final memorandum.[8] One of these notable omissions would have established Section I(a)(4), providing a fourth item for DOL to reexamine:

> Whether the prohibited transaction exemptions (PTEs) issued in conjunction with the rule, especially the best interest contract exemption, substantially undermine the rule's effectiveness at achieving its intended goals.

This omission suggests that the Presidential Memorandum does not require DOL to reexamine the exemptions that accompanied the final fiduciary investment adviser definition. In fact, the Presidential Memorandum as released only addresses the "Fiduciary Duty Rule," a term it defines to mean DOL's "final rule titled, Definition of the Term 'Fiduciary'; Conflict of Interest Rule—Retirement Investment Advice (Fiduciary Duty Rule)" and cites to the Federal Register sections concerning the new definition.[9] The exemptions from the rule are each set forth under separate sections of the Federal Register. Together with other sections that were in the draft but left out of the final version, the Presidential Memorandum could be read as intending only to reach the new fiduciary definition.

DOL, however, is applying the memorandum expansively to include the PTEs, including the Best Interest Contract (BIC) Exemption. This leads to at least one question: can the PTEs stand independently of the new definition? Put differently, could someone who falls under DOL's 1975 five-part definition of a fiduciary ever take advantage of one of the new or amended exemptions, such as the BIC Exemption or PTE 84-24, in practice? With respect to the amended PTE 84-24,[10] the only material change affected certain advice to individual retirement account (IRA) owners. But, IRA service providers are generally not fiduciaries under the five-part test, meaning that they would not be affected by the change to PTE 84-24. However, certain persons who would qualify as fiduciaries under the five-part test conceivably could utilize portions of the BIC Exemption that still applied, though determining those sections would certainly be a headache-inducing exercise.[11] As a practical matter, however, the BIC Exemption and related PTEs largely would fall by the wayside without the new fiduciary definition. And DOL is treating the various pieces of the Fiduciary Rule as inseparable.

DOL Response to the Presidential Memorandum. On March 1, DOL issued a proposed rule that would delay the Fiduciary Rule's applicability date by 60 days.[12] The delay would push the applicability date from April 10 to June 9. According to DOL, it needs that time to conduct the review and analysis demanded by the Presidential Memorandum in order to avoid what DOL appears to consider the worst-case scenario, one in which the Fiduciary Rule goes into effect on April 10 but is subsequently rescinded following completion of the analysis. This would result in the industry making two costly adjustments in response to the multiple policy changes.[13] Under a 60-day delay, DOL estimates that investors would be shorted $890 million (of the $33-36 billion estimated in DOL's original Regulatory Impact Analysis) in potential gains from the Fiduciary Rule over the course of 10 years, and the rule would only save $42 million in compliance costs that are not related to startup costs.[14]

In its March 1 proposed rule, DOL also communicated that it considered a 180-day delay. While many anticipated that 180 days would be the timeframe ultimately chosen, DOL decided against it due to the anticipated costs to both investors and financial institutions.[15] DOL believes that the aforementioned estimated costs of the 60-day delay would triple under a 180-day delay.[16]

The March 1 proposed rule sheds little light on DOL's plans for the future of the Fiduciary

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Rule, but it leaves open a range of possibilities for its final decision. Pointing out that it feels it has already evaluated several questions raised in the Presidential Memorandum, DOL nevertheless invited comments on several major elements of the proposal, including both its timing and substance.[17] In response to its request, public comments have poured in, with the current count at over 9,000.[18] With respect to timing, DOL requested comments on the possible impact of a longer extension of the April 10 effective date. As for the substance of the delay, DOL solicited comments on whether it should delay applicability of all or any part of the Fiduciary Rule's provisions, including exemptions. Finally, DOL issued a blanket request for comments on any areas that the public believes DOL inadequately addressed in the original Regulatory Flexibility Analysis, particularly any areas highlighted by the Presidential Memorandum, a 45-day comment period that closed on April 17. Depending on comments received and the result of its examination, DOL indicated that it may decide to allow the final rule and exemptions to go into effect, further extend the applicability date, propose to withdraw the rule, or propose amendments to the rule and/or exemptions.

In addition to analyzing the many industry comments, DOL must now also contend with a key finding by the Office of Management and Budget (OMB). As part of the rule-making process, OMB is tasked with evaluating the economic significance of proposed regulations.[19] Generally, a rule is "economically significant" if it is expected to have an annual effect on the economy of $100 million or more, and such a rule must be supported by heightened economic analysis.[20] Based on DOL's estimate of an $890 million impact on investors, OMB concluded the delay would be economically significant, requiring DOL to compile a more detailed economic analysis as part of the proposed rule.[21]

The Proposed Rule Escapes the "Two for One" Requirement. In contrast, OMB found the proposed rule was *not* economically significant for purposes of the administration's "two for one" regulatory order.[22] Executive Order 13771 essentially requires agencies to eliminate two regulations for every one new "economically significant" regulation.[23] One explanation for this apparent discrepancy could be that the "two-for-one" rule only applies to regulations that impose $100 million or more annually in *costs* to the overall economy, while the "economically significant" label attaches to any rule that has an *effect* on the overall economy of $100 million or more. Since the delay in the Fiduciary Rule is estimated to involve a cost of $42 million to the industry, OMB may have determined that it did not trigger the type of "costs" targeted by the "two-for-one" rule. In any event, the proposed rule for the 60-day delay will not require DOL to eliminate two existing regulations.

The Final Rule.[24] Just under the wire, DOL published the final rule on April 7, 2017. Consistent with the proposed rule, the final rule extends for 60 days the applicability of the fiduciary definition and the BIC exemption. Barring further delays or other action, as of July 9, 2017, the new fiduciary definition and impartial conduct standards become applicable.

New Field Assistance Bulletin. Now moot, DOL issued Field Assistance Bulletin No. 2017-01 (FAB), a nonenforcement policy that essentially pushes out the Fiduciary Rule's applicability date to June 9 if DOL grants the 60-day delay or to a "reasonable" date following denial of the delay.[25] In the new FAB, DOL communicated its intent to issue a decision on the proposed delay before April 10, but it provided two avenues for relief if it fails to do so. If it decides after April 10 to delay the implementation date, then it will not take any enforcement action during the "gap" period from April 10 through the date it issues its decision. If it decides after April 10 *not* to delay the implementation date, then it will not take enforcement action from April 10 through the date the decision is issued and for a "reasonable period" after the date it decides not to delay implementation. The issuance of the final rule before April 10 effectively moots the FAB.

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Legislative Activity

As DOL weighs its options to delay the Fiduciary Rule, Congress is considering legislation for a significantly longer delay. On January 6, 2017, South Carolina Representative Joe Wilson introduced a bill, H.R. 355[26] to push back the effective date two years. The bill was referred to the House Committee on Ways and Means, as well as the House Committee on Education and the Workforce, the latter of which Rep. Wilson is second-in-command, increasing the chances of the bill moving forward. However, given the Presidential Memorandum and DOL's subsequent proposed delay, Congress will likely hold its efforts to eliminate or modify the Fiduciary Rule until the dust settles, in the hopes that the Trump administration will indefinitely delay or significantly temper the Fiduciary Rule.

The Court Decisions: DOL Continues Its Winning Streak

Though the court opinions may become moot if the president and Congress have their way, a summary of the most recent opinions provides an insight into the underlying conflicts raised by the Fiduciary Rule. The latest two decisions came out of the District Courts for the Northern District of Texas and the District of Kansas. First, on February 8, 2017, five days after the release of the Presidential Memorandum directing DOL to reexamine the final conflict of interest regulation, Chief Judge Barbara Lynn of the United States District Court for the Northern District of Texas delivered DOL a sweeping victory in the third decided challenge to the Fiduciary Rule.

The Texas Court Decision

A full-throated endorsement of the Fiduciary Rule, Chief Judge Lynn's decision in *Chamber of Commerce v. Hugler*[27] categorically set aside each of the arguments made by US Chamber of Commerce, American Council of Life Insurers, Indexed Annuity Leadership Council, and other industry groups (collectively, the industry groups) adding to the victories that DOL has already chalked up in the United States District Courts for the District of Columbia and Kansas.

In issuing her ruling, the chief judge rebuffed DOL's motion to stay the proceeding in light of the Presidential Memorandum. Her decision somewhat presciently addressed the three points identified in the Presidential Memorandum for further examination by DOL:

- *Access to Retirement Products and Financial Advice*. Chief Judge Lynn explained that DOL analyzed the relevant evidence and concluded that access to affordable investment advice would increase due to fewer conflicts of interest, increased transparency, and increased market efficiency. Like Judge Randolph Moss in the first decision addressing the Fiduciary Rule out of the United States District Court for the District of Columbia,[28] the Texas court referenced favorably DOL's analysis of similar, but more aggressive, regulations placed on the United Kingdom's investment products, which did not result in decreased investor access to retirement products. The chief judge was also dismissive of the claim that the Fiduciary Rule would reduce investor access to certain retirement products, specifically fixed indexed annuities (FIAs) and variable annuities, commenting in a footnote that the argument was unpersuasive.
- *Harm to Investors from Disruption Caused by the Fiduciary Rule*. Although Chief Judge Lynn did not directly address disruption within the retirement services industry (while at the same time noting the existence of "viable options" to adapt to the Fiduciary Rule), the court did find that the Fiduciary Rule would benefit, not harm, investors. The court adopted DOL's statistic that accepting conflicted financial advice could cause an investor to "lose 6 to 12 and possibly as much as 23 percent" of the value of his or her retirement savings over 30 years of retirement, a conclusion echoed by Judge Moss.

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- *Increase in Litigation and Costs to Investors*. Chief Judge Lynn found that DOL adequately considered the increase in litigation and costs to investors and provided several cogent reasons to dismiss the argument. First, the BIC Exemption permits advisors and financial institutions to require mandatory arbitration of individual claims, enabling claims to be resolved outside of court. Second, the chief judge believed that DOL "thoroughly" explained the best interest standard in the BIC Exemption, limiting the possibility for litigation over ambiguities and, she articulated, it can be further defined by referencing ERISA and the common law of agency and trusts, which underlie the best interest standard. Third, citing several court opinions involving IRA transactions, Chief Judge Lynn dismissed the concerns with potential conflicting results across the states, explaining—as Judge Moss also concluded—that these issues would have arisen prior to the BIC Exemption, since state courts have always been a forum in which to litigate wrongs arising from IRA transactions. Finally, regarding the threatened rise of class actions, the court observed that DOL is not required to specifically quantify potential class action litigation costs and pointed out the significant hurdles built into the class action procedures.

Otherwise, her decision aligned with the earlier decision by Judge Moss in the National Association for Fixed Annuities (NAFA) case filed in the District of Columbia federal court.

The Fiduciary Rule Did Not Exceed DOL's Authority. Chief Judge Lynn held that DOL's expanded definition of fiduciary investment adviser is reasonable under ERISA. ERISA does not, as the industry groups argued, limit investment advice to only advice "provided on a regular basis and through an established relationship," as required under the prior five-part test. Nor is it the case that financial professionals who receive sales commissions for selling financial products are only rendering incidental, not investment, advice. As the industry groups conceded during briefing, insurers compensate agents and broker-dealers for the "significant effort involved in learning about, marketing, and selling annuities." This, the court stated, "fits comfortably within the description of someone who renders investment advice for indirect compensation … " and "compensation" under the statute includes direct *and* indirect compensation.

The court also explained that ERISA departs from the common law of trusts in several areas, including the scope of fiduciary duties and, therefore, Congress did not restrict DOL's interpretation of investment advice to the common law of trusts. Furthermore, the court opined that DOL's interpretation does not conflict with the Investment Advisers Act, which provides exclusion for broker-dealers rendering incidental investment advice, because Congress did not replicate this exclusion under ERISA.

The BIC Exemption and PTE 84-24 Comply with Applicable Law. Chief Judge Lynn devoted a substantial portion of the opinion striking down multi-pronged attacks on the BIC Exemption and PTE 84-24.

The industry groups argued that DOL exceeded its exemption-granting authority by imposing ERISA Title I fiduciary duties of loyalty and prudence on ERISA Title II fiduciaries (for example, advisers to IRAs), duties that are not expressly included in Title II. The court disagreed, reasoning that "[c]ongressional silence does not overcome DOL's express statutory authority to grant exemptive relief." Allowing the industry groups' arguments would effectively impose a "non-textual" limitation on DOL's authority. Chief Judge Lynn found the BIC Exemption's conditions reasonable in light of DOL's conclusion that commission-based compensation creates additional conflicts of interest. Further, she ruled that DOL appropriately focused on whether the exemption is feasible for DOL to apply, not whether it is feasible for the regulated

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industry to satisfy. Moreover, the industry groups' concern over the exemptions' impact on independent marketing organizations (IMOs), which are currently the largest distribution channels for FIAs but do not qualify for the BIC Exemption, received no sympathy. Chief Judge Lynn adopted DOL's position, reasoning that the industry could adapt by, for example, having the affiliated broker or registered investment adviser serve as the financial institution, or through IMOs individually petitioning to become financial institutions.

Although the subject of the parties' supplemental briefing,[29] the recently proposed class exemption for IMOs was not addressed by the court. Released on January 19, 2017, the Proposed Best Interest Contract Exemption for Insurance Intermediaries allows IMOs to act as financial institutions and receive compensation in connection with transactions involving FIAs.[30] The proposed exemption retains the core BIC Exemption requirements—including the best interest contract and reasonable compensation rules—and adds rules specific to annuities and insurance intermediaries.

The BIC Exemption and PTE 84-24 Do Not Create a Private Right of Action. The court rejected the argument that the BIC Exemption and PTE 84-24 create a private right of action or federal cause of action under Title II of ERISA. According to the chief judge, the exemptions do not impact the preexisting enforcement regime because state law would continue to supply the cause of action. Indeed, annuities held in IRAs were already subject to breach of contract claims under state law. Further, the court explained that other federal regulations, including certain ERISA prohibited transaction exemptions, require entities to enter into written contracts with mandatory provisions.

Moving FIAs from PTE 84-24 to the BIC Exemption Complies with the Administrative Procedure Act (APA). The industry groups claimed DOL did not provide adequate notice that it was contemplating moving FIAs from PTE 84-24 to the BIC Exemption, and, therefore, did not provide an opportunity to comment. The court rejected this argument, noting that several commenters, including one of the industry groups, expressly anticipated that FIAs might be covered by the BIC Exemption under the final regulations. Moreover, the court held that DOL acted reasonably in this regard based on the higher complexity and risk of conflict of interest that FIAs generate compared to fixed rate annuities.

No First Amendment Violation. The industry groups argued that the Fiduciary Rule regulates commercial speech and would not withstand First Amendment scrutiny. The court disagreed, first holding that the industry groups waived their First Amendment challenge by failing to raise the argument during the six-year rulemaking process. Even if waiver did not apply, the court held that the Fiduciary Rule regulates professional conduct, not commercial speech and, therefore, is not a speech restriction under the First Amendment.

The Kansas Decision

Judge Daniel Crabtree had already rejected Market Synergy Group, Inc.'s (Market Synergy's) narrower preliminary challenge in the Kansas litigation,[31] and he has now also rejected the plaintiff's challenge on the merits. On February 17, 2017, Judge Crabtree upheld the new PTE 84-24 as applied to FIAs in *Market Synergy Group, Inc. v. US Department of Labor*,[32] giving DOL its fourth victory over challenges to the Fiduciary Rule. The decision is a narrow one, rejecting Market Synergy's contention that DOL illegally moved FIAs from PTE 84-24 to the more onerous BIC Exemption.

Judge Crabtree's decision came as no surprise. Deciding the issue on the merits, the judge twice noted that the parties submitted no new evidence in the most recent briefing and, therefore, found "no reason to depart from the legal conclusions and reasoning" set forth in his November order denying Market Synergy's motion for a preliminary injunction of the new PTE 84-24. Without citation to

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either Chief Judge Barbara Lynn's recent decision in the Texas litigation upholding the Fiduciary Rule or District of Columbia District Court Judge Randall Moss's judgment in favor of DOL on similar issues, Judge Crabtree sided with DOL again. Incorporating the legal conclusions from his November opinion, Judge Crabtree held that DOL did not violate the APA and the Regulatory Flexibility Act (RFA) for four reasons.

First, the judge ruled that DOL satisfied the APA's requirement to provide fair notice of the proposed rule changes because the removal of FIAs from the final version of PTE 84-24 logically grew out of the proposed rule. As the prior opinion explained, for example, DOL specifically requested comments on whether it was appropriate for PTE 84-24 to cover "insurance and annuity contracts that are not securities," which would include FIAs. And, even if notice had been insufficient, any APA violation was harmless because other commenters expressed the same concerns that Market Synergy argued it would have submitted had DOL given the desired notice.

Second, DOL's decision to treat FIAs differently than all other fixed annuities in PTE 84-24 was not arbitrary and capricious but was supported by a reasoned explanation. In particular, DOL's regulatory impact analysis substantiated the heightened complexity, risk and conflicts of interests associated with recommendations of variable annuities and FIAs, compared to those of fixed annuities, which are covered by the final PTE 84-24.

Third, as required by the APA and RFA, DOL properly considered the economic impact on independent insurance agent distribution channels. As explained in the November opinion, DOL considered the costs that insurers will incur for complying with the Fiduciary Rule and its exemptions and left IMOs several options to continue to operate under the BIC Exemption: (a) IMOs can continue supporting independent insurance agents while insurers serve as the financial institution under the BIC Exemption; (b) insurers and individual agents could affiliate with a broker-dealer; and (c) IMOs may seek individual exemptions to qualify as financial institutions. Judge Crabtree did not address DOL's proposed class exemption for IMOs, released on January 19, 2017, allowing IMOs to act as financial institutions and receive compensation in connection with transactions involving FIAs.

Fourth, DOL did not exceed its statutory authority in issuing the new PTE 84-24. According to the judge, Congress granted DOL the authority to issue the exemptions found in the final Fiduciary Rule, and courts must defer to DOL's determinations.

What to Expect Next In Court

Although the three district courts to address the merits of the Fiduciary Rule have all sided with DOL, perhaps reducing the possibility of a circuit split, the fate of the Fiduciary Rule in litigation is far from clear. In the Texas and Kansas cases, the plaintiffs' appeals to the Fifth and Tenth circuits, respectively, are pending.[33] In the DC litigation, NAFA's appeal to the DC Circuit Court of Appeals is also pending.[34] At the same time, although DOL moved to stay the litigation in the Minnesota District Court, Judge Susan Nelson denied DOL's motion to stay, concluding that a request for a stay based on "[m]ere speculation about the possibility of administrative action—especially when compounded by uncertainty regarding what form that action might take"—did not satisfy the presumption against granting a stay.[35] Despite their losses in court, however, opponents of the Fiduciary Rule may yet be successful in dismantling the Fiduciary Rule with the assistance of the Trump Administration.

Conclusion

DOL's courtroom successes may not determine the fate of the Fiduciary Rule because the rule still must overcome many hurdles. The White House has made clear that it generally disfavors increasing

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regulation of private industry and has specifically targeted the Fiduciary Rule. Even if the Fiduciary Rule's success in court carries over to the barriers raised by the Executive Branch, it will have to withstand challenges from Congress that are currently waiting in the wings. For now, though, DOL faces a decision—whether to continue to delay the Fiduciary Rule's effective date, modify its substance, do neither, or do both. Regardless of its decision, much is still yet to come.

Ms. Gee is a Member, and **Mr. Wamsley** is an associate, with Miller & Chevalier Chartered.

NOTES

1. For ease of reference, "Fiduciary Rule" means the rewritten investment adviser for a fee regulation, Best Interest Contract Exemption, Principal Transaction Exemption, and amendments to Prohibited Transaction Exemptions 84-24, 86-128, 75-1, 77-4, 80-83, and 83-1.
2. Memorandum of February 3, 2017: Fiduciary Duty Rule, 82 Fed. Reg. 9,675 (Feb. 7, 2017).
3. 82 Fed. Reg. 16, 902 (Apr. 7, 2017); Temporary Enforcement Policy On Fiduciary Duty Rule, Field Assistance Bulletin 2017-01 (March 10, 2017).
4. Protecting American Families' Retirement Advice Act, H.R. 355, 115th Cong. (2017).
5. Memorandum of February 3, 2017: Fiduciary Duty Rule, 82 Fed. Reg. 9,675.
6. *Id.*
7. News Release, "US Dept. of Labor, US Dept. of Labor to Evaluate Fiduciary Rule" (Feb. 3, 2017), available at *https://www.dol.gov/newsroom/releases/opa/opa20170203*.
8. *See* "Draft Memorandum from Donald J. Trump to the Secretary of Labor, Fiduciary Duty Rule" (Feb. 3, 2017). Several other notable omissions from the final memorandum were provisions requesting that DOL seek a 180-day delay of the effective date, as well as considering seeking stays in all court proceedings pending completion of the reexamination required under the memorandum.
9. *See* Memorandum of February 3, 2017: Fiduciary Duty Rule, 82 Fed. Reg. 9,675.
10. 81 Fed. Reg. 21,147 (Apr. 8, 2016).
11. *See* 81 Fed. Reg. at 21,076.
12. 82 Fed. Reg. 12,319 (Mar. 2, 2017).
13. *See* 82 Fed. Reg. at 12,320.
14. 82 Fed. Reg. at 12,320–12,321.
15. 82 Fed. Reg. at 12,321.
16. *Id.*
17. 82 Fed. Reg. at 12,323–12,325.
18. The total number of comments received as of April 3, 2017 was 9,295. Definition of Term Fiduciary; Conflict of Interest Rule-Retirement Investment, *https://www.regulations.gov/document?D=EBSA-2010-0050-3491*. The comment period regarding the proposal to extend the applicability date for 60 days closed on March 17, 2017, and the comment period regarding the additional evaluation required under the Presidential Memorandum closed on April 17, 2017.
19. Exec. Order No. 12,866, 3 C.F.R. 638 (1994).
20. *See id.*
21. Office of Info. and Regulatory Affairs, Office of Mgmt. and Budget, OIRA Conclusion of EO 12866 Regulatory Review of "Definition of the Term 'Fiduciary'—Delay of Applicability Date," *https://www.reginfo.gov/public/do/eoDetails?rrid=127214* (last visited Mar. 15, 2017).
22. 82 Fed. Reg. at 12,323.
23. Memorandum: "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled 'Reducing Regulation and Controlling Regulatory Costs'," available at *https://www.whitehouse.gov/the-press-office/2017/02/02/interim-guidance-implementing-section-2-executive-order-january-30-2017*.
24. The final rule was issued just days before going to press, precluding analysis of the preamble and rule for this article.
25. Temporary Enforcement Policy On Fiduciary Duty Rule, Field Assistance Bulletin 2017-01 (Mar. 10, 2017).
26. Protecting American Families' Retirement Advice Act, H.R. 355, 115th Cong. (2017).

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[27] Case 3:16-cv-01476-M, 2017 WL 514424 (N.D. Tex. Feb. 8, 2017). On April 5, 2017, the Fifth Circuit denied the industry group's motion to enjoin the district court judgment pending appeal, Case No. 17-10238 (5th Cir. Apr. 5, 2017).

[28] Nat'l Ass'n for Fixed Annuities v. Perez, Case 1:16-cv-01035-RDM (D.D.C. Nov. 4, 2016).

[29] Defendants' Notice, Chamber of Commerce of the US v. Perez, No. 3:16-cv-1476-M (N.D. Tex., filed Jan. 18, 2017), Doc. 129 (notifying court of new proposed prohibited transaction exemption for IMOs); Plaintiffs' Response to Defendant's Notice of Factual Developments, Chamber of Commerce of the US v. Perez, No. 3:16-cv-1476-M (N.D. Tex., filed Jan. 25, 2017), Doc. 130; Defendants' Reply to Plaintiffs' Response to Defendants' January 18, 2017 Notice, Chamber of Commerce of the US v. Perez, No. 3:16-cv-1476-M (N.D. Tex., filed Jan. 30, 2017), Doc. 133.

[30] 82 Fed. Reg. 7,336 (Jan. 19, 2017).

[31] Market Synergy Group, Inc. v. US Dept. of Labor, Case No. 16-CV-4083-DDC-KGS (D. Kan. Nov. 28, 2016).

[32] Case No. 16-CV-4083-DDC-KGS, 2016 WL 6948061 (D. Kan. Nov. 28, 2016).

[33] *See* Plaintiffs' Notice of Appeal, Chamber of Commerce of the US v. Hugler, No. 3:16-cv-1476-M (N.D. Tex., filed Feb. 24, 2017), Doc. 140; Plaintiffs' Notice of Appeal, Market Synergy Group, Inc. v. Hugler, No. 5:16-cv-04083-DDC-KGS (D. Kan., filed Feb. 22, 2017), Doc. 73.

[34] *See* Plaintiffs' Notice of Appeal, Nat'l Ass'n for Fixed Annuities v. Perez, No. 16-1035 (RDM) (D.D.C., filed Nov. 14, 2016), Doc. 48.

[35] Order Denying Request for Stay of Proceedings, Thrivent Financial for Lutherans v. Perez, No. 16-cv-03289 (D. Minn. Feb. 21, 2017).

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