THOMPSON HINE

Employee Benefits Update

July 2024

District Court Blocks DOL Investment Advice Rule – For Now

As discussed in a recent article, the U.S. Department of Labor (DOL) issued final regulations in April 2024 – called the Retirement Security Rule (Final Rule) – significantly expanding the definition of investment advice fiduciary under the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code, which would impose additional requirements on investment advice fiduciaries who rely on prohibited transaction exemptions to work with their clients. The DOL made no secret that the Final Rule was intended, in large part, to target one-time rollover advice and impose fiduciary status on those who recommend certain annuity products. The Final Rule provided for an effective date of September 23, 2024.

As expected, lawsuits were quickly filed challenging the Final Rule and certain amended prohibited transaction exemptions. The first case was brought on May 2, 2024, by the Federation of Americans for Consumer Choice, Inc., a trade organization whose members include insurance agents and agencies that market fixed insurance products such as fixed indexed annuities, and other plaintiffs in the U.S. District Court for the Eastern District of Texas. Shortly after the complaint was filed, the plaintiffs filed a motion to stay the Final Rule's effective date and for a preliminary injunction of its enforcement.

On July 26, following briefing and oral argument, the district court granted the plaintiffs' motion and issued a nationwide stay of the effective date of the Final Rule, as well as the related amendments to the DOL's Class Prohibited Transaction Exemption 84-24 (PTE), which provides relief for certain transactions involving insurance contracts, annuities and mutual funds between plans and IRAs and insurance agents and brokers, among others, if certain conditions are met.

In issuing the stay, the court held that the plaintiffs made the necessary showing that (i) they were likely to succeed on the merits of their claim challenging the Final Rule and PTE because those rules conflict with ERISA and are unreasonable, arbitrary and capricious; (ii) without a stay, the plaintiffs face irreparable harm; and (iii) the balance of the equities and public interest favor the stay. Throughout the decision, the court compared the Final Rule to a similar rule promulgated by the DOL in 2016, which was struck down by the Fifth Circuit in 2018 in *Chamber of Commerce v. Dep't of Labor*, finding the Final Rule is materially indistinguishable from the 2016 rule. The court also noted that, in determining whether the plaintiffs are likely to succeed in establishing the Final Rule is invalid, the court owes the DOL no deference following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* overruling *Chevron v. EPA*.

The court's stay is nationwide. The court declined to limit the stay to the parties in the case because it found that the Final Rule and PTE are likely unlawful as to all similarly situated individuals, and that a nationwide stay provides for uniform application and mitigates potential confusion among market participants.

While the decision is a welcome development for certain insurance companies and agents, as well as others potentially impacted by the Final Rule, the court did not rule on the merits of the plaintiffs' claims, and we expect any future decision invalidating the Final Rule would be appealed. Entities potentially subject to the Final Rule may want to continue to consider whether operational changes are necessary to comply with the Final Rule in the event it ultimately is upheld.

FOR MORE INFORMATION

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