US circuit court strikes down DOL fiduciary rule

On March 15, 2018, the Fifth Circuit Court — which covers Texas, Louisiana and Mississippi — ruled in a 2-1 decision that the DOL overstepped its authority by issuing the fiduciary rule

The court's decision

"That times have changed, the financial market has become more complex, and I.R.A. accounts have assumed enormous importance are arguments for Congress to make adjustments in the law, or for other appropriate federal or state regulators to act within their authority. A perceived 'need' does not empower D.O.L. to craft de facto statutory amendments or to act beyond its expressly defined authority"

Possible next steps

Rehearing: The most likely next step is for the DOL to appeal the decision and ask the Fifth Circuit to reconsider its decision. In this scenario, all of the court's judges would hear the case, rather than just the three-judge panel that made the decision

Supreme Court: Because there was at least one decision in another circuit court that conflicts with the most recent case, it is also possible the Supreme Court could eventually weigh in

SEC rule: Alternatively, the Labor Department could opt to let the decision stand without appealing it. The SEC is reportedly working on its own rule, which would not likely be as strong as the DOL's fiduciary rule

Outlook for the fiduciary rule

- The decision represents the second major victory for the financial sector under President Trump after Congress voided the CFPB's arbitration rule in November 2017
- For now, industry professionals are unlikely to change how they comply based on this ruling because the DOL's rule is already partially in effect — as of June 9, 2017 financial advisers must adhere to the rule's best interest standard, though enforcement is delayed until 2019
- The decision is not necessarily the end of the rule, but its future is highly uncertain

Sources: National Journal research, 2018; Lisa Beilfuss, "Fiduciary Rule Dealt Blow by Circuit Court Ruling," The Wall Street Journal, March 15, 2018.