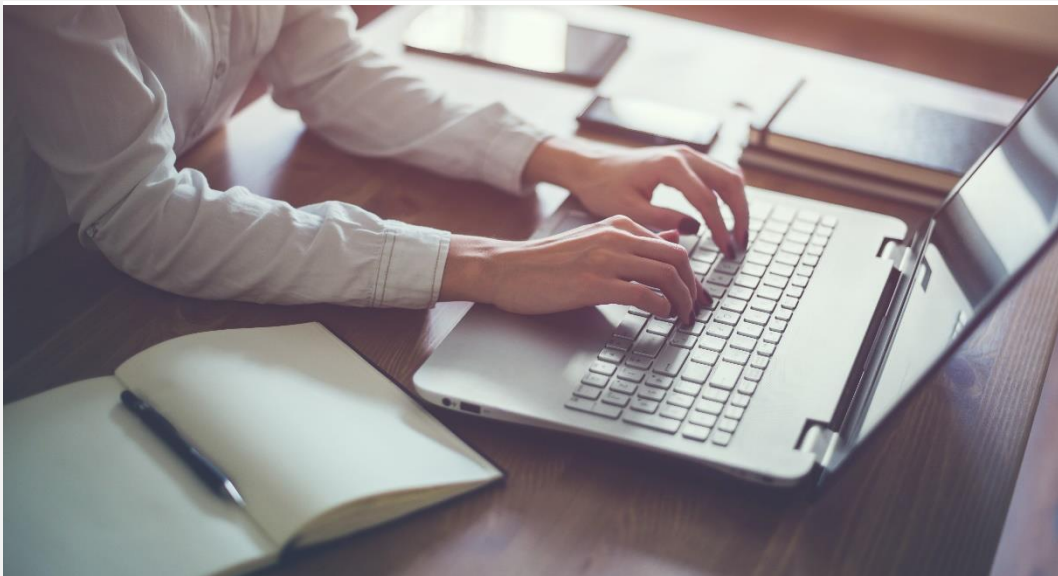




Rewards Policy Insider 2024-17



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Court Invalidates FTC's Non-Compete Rule

A Federal Trade Commission (FTC) rule that would invalidate most employment non-compete clauses has been invalidated by a Federal district court. The district

court's order forbids FTC from trying to enforce the rule, which was otherwise scheduled to take effect on September 4, 2024.

Background

Earlier this year, the FTC issued the final rule to ban most existing and all future non-compete clauses beginning on September 4, 2024. The only exception was for non-compete clauses for "senior executives" executed prior to September 4. The rule defines a "senior executive" as someone in a policy-making position whose annual salary exceeds \$151,164.

The rule broadly defines non-compete clauses as any "term or condition of employment that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from (1) seeking or accepting work in the United States with a different person where such work would begin after the conclusion of the employment that includes the term or condition; or (2) operating a business in the United States after the conclusion of the employment that includes the term or condition."

District Court Ruling

The district court concluded the FTC lacked the statutory authority to promulgate the rule, and that it was compelled to invalidate it pursuant to the Administrative Procedures Act's (APA) arbitrary and capricious standard. The FTC asked the court to limit its ruling only to the parties that brought the case, but the court ruled the APA does not allow for "party-specific" relief. As a result, the court's ruling prohibits the FTC from enforcing the rule against any employer.

What's Next?

The FTC could appeal the district court's ruling to the 5th Circuit Court of Appeals, which potentially could stay the district court's decision – thus allowing the rule to take effect while it considers the merits of the case. Or, it could keep the district court's order in place while it reviews the validity of the FTC's rule – a process that almost certainly will extend well into 2025.

Also of note, two other federal district courts have refused to block the FTC's final rule in separate cases. If this split persists at the Federal level, the Supreme Court may ultimately be forced to resolve questions about the validity of the FTC's rule.

DOL's Fiduciary Rule on Pause Following Court Rulings

Following two rulings from separate Texas district court judges in late July, the Department of Labor's (DOL) "fiduciary rule," which amended the regulatory definition of an investment advice fiduciary, is now paused pending further proceedings in each case. The fiduciary rule,

which was released by DOL in final form in April 2024, was scheduled to go into effect in September.

Background

On April 23, 2024, DOL released its final fiduciary rule regulatory package, which updated the definition of who is considered a fiduciary under ERISA by reason of providing investment advice and made corresponding changes to several Prohibited Transaction Exemptions (PTEs) related to the provision of investment advice. The fiduciary rule updates a regulation from 1975 that created a five-part test to determine fiduciary status. DOL's 2024 fiduciary rule marks the agency's most recent – but not its first – attempt to modify the 1975 regulation. In 2016, for example, DOL amended the regulation to significantly expand the definition of an investment advice fiduciary.

The 2016 rule caused major concerns among investment professionals and investment firms that they would be treated as fiduciaries more frequently when providing advice and that they would need to adhere to unnecessarily strict standards when providing advice. Retirement plan sponsors also worried that the more expansive rule would curtail the availability or increase the cost of certain investment services to plans. The 2016 rule was invalidated by the Fifth Circuit Court of Appeals in 2018.

The 2024 rule is strikingly similar to the 2016 rule and causes the same concerns for investment professionals, firms, and plan sponsors. Thus, unsurprisingly, the 2024 rule was swiftly challenged in court following the final rule's release. Two separate lawsuits were brought challenging the fiduciary rule: (1) *Federation of Americans for Consumer Choice v. DOL* (the FACC Case), which was filed in the U.S. District Court for the Eastern District of Texas; and (2) *American Council of Life Insurers v. DOL* (the ACLI Case), which was filed in the U.S. District Court for the Northern District of Texas. Both plaintiffs asked the courts to prevent the rule from going into effect as scheduled on September 23, 2024 pending a final outcome in each case.

Two District Courts Put Fiduciary Rule on Nationwide Pause

On July 25, 2024, the Eastern District of Texas issued a ruling in the FACC Case pausing the fiduciary rule nationwide while further proceedings in the case continue. Because the plaintiffs in the FACC Case specifically challenged DOL's new definition of fiduciary investment advice and the corresponding amendments to PTE 84-24 (which generally applies to independent insurance agents), the FACC Case's ruling prevents those two elements of the final fiduciary rule package from going into effect until a final ruling.

Just one day later, the Northern District of Texas issued its own ruling pausing the fiduciary rule from going into effect nationwide. The ACLI Case's ruling is larger in scope than the FACC Case, because it applies not just to the new definition of fiduciary investment advice and the amendments to PTE 84-24, but to the entire fiduciary rule package. In their rulings, both courts heavily relied on the Fifth Circuit's 2018 decision striking down the 2016 fiduciary rule and noted the similarities between the 2016 and 2024 rules.

What's Next

While the temporary pause on the fiduciary rule will cause many to breathe a sigh of relief, this is not the last word on the fiduciary rule. Proceedings will continue in both cases, and any final ruling in the cases could eventually be appealed to the Fifth Circuit.

Democratic and Republican Parties' 2024 Platforms Highlight Health and Retirement Priorities

Ahead of the upcoming presidential election, the Democratic and Republican parties have released their 2024 party platforms. While these policies do not always translate into legislation, they do provide a preview of the parties' guiding principles that will shape their policy if they control the White House beginning in 2025. In addition to other topics, both platforms touch on a range of health and retirement issues.

Background

Prior to the presidential nominating conventions every four years to determine the Democratic and Republican presidential nominees, each party develops a platform that is eventually adopted at the national convention, typically following a debate. While these platforms are not binding and do not always come to fruition, historically they have offered insight into the policy priorities of an incoming presidential administration. This article focuses on the health- and retirement-related priorities outlined in both parties' platforms.

Republican Platform

In July 2024, the Republican National Convention adopted the [2024 Republican Platform](#), which covers a range of policies at a high level, including immigration, inflation, tax cuts, and trade policy. While the platform does not cover any retirement issues, it does briefly cover health-related matters, stating that healthcare and prescription drug costs are "out of control," and Republicans will increase transparency, promote choice and competition, and expand access to new affordable healthcare and prescription drug options. The platform also states that Republicans will protect Medicare.

Democratic Platform

Also in July, the Democratic National Convention's Platform Committee adopted the draft [2024 Democratic Party Platform](#), a detailed document covering issues such as economic growth, climate, immigration, and foreign policy. While the draft platform was released prior to President Biden's announcement that he would not seek reelection, it is likely that these priorities will carry over to Vice President Harris, should she win November's election. On retirement policy, the platform reiterates the Democratic party's support for the Department of Labor's controversial fiduciary rule. The platform also includes brief mentions of a number of retirement-related tax proposals that the Biden Administration has previously proposed (but which have not become law), such as a proposed \$10 million cap on retirement savings.

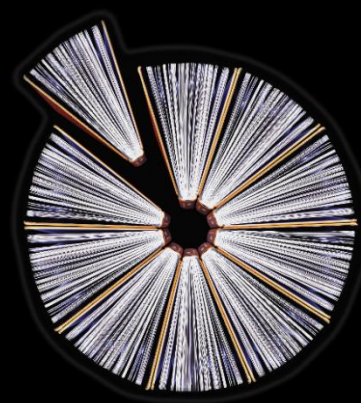
On health-related issues, the platform floats several proposals, including making the expanded Affordable Care Act premium tax credits permanent; expanding “no surprise billing” to include ground ambulances (the current rules apply only to air ambulances); expanding the \$35 per month cap on insulin costs to everyone, not just Medicare beneficiaries; and enhancing transparency requirements for pharmacy benefit managers.

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