



DOL drops appeal of court rulings blocking 2024 fiduciary rule

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A Biden-era Department of Labor (DOL) [regulation](#) expanding the scope of fiduciary investment advice under ERISA remains on hold after the agency [dropped its appeal](#) of two lower court orders preventing the rule from taking effect. The rule and related amendments to seven prohibited transaction exemptions (PTEs) were originally scheduled to go live on Sept. 23, 2024. The dismissal of DOL's appeal leaves the court orders blocking the rule in place pending resolution of the legal challenges seeking the rule's invalidation. However, the rule is unlikely to take effect in its current form now that DOL has [indicated](#) it expects to engage in further rulemaking.

Background on the rule. Under ERISA, anyone who provides investment advice for a fee or compensation is a fiduciary. DOL's [historical regulatory definition](#) of fiduciary investment advice — which was adopted in 1975 — establishes a five-part test that requires advice to be provided on a “regular basis” to be fiduciary in nature. The Biden-era rule sought to replace the five-part test with a more expansive four-part framework covering recommendations made by persons occupying positions of trust or confidence, including treating as fiduciary advice a one-time recommendation that a participant roll over their retirement benefit or take a distribution. For a more detailed discussion of how the rule might affect plan sponsors, see [What plan sponsors should know about DOL's final fiduciary rule](#) (June 20, 2024).

Court challenges delay the rule's applicability. Soon after the rule's publication, industry groups filed a pair of lawsuits in Texas seeking to invalidate the rule before it could take effect. On July 25, 2024, the judge in one case [issued an order](#) staying the rule's effective date pending resolution of the lawsuit. The following day, the judge in the other case [issued a similar order](#) that also stayed the related PTE amendments. Both courts concluded that the rule's challengers were likely to succeed on their claims. The effect of these orders was to leave DOL's five-part test in place. DOL

under the Biden administration initially appealed both rulings, but the agency has reversed course under the Trump administration.

Next steps not yet clear. While the dismissal of DOL’s appeal leaves the court orders blocking the rule in place, industry groups’ legal challenges remain unresolved. Both lower court proceedings — which were paused while DOL’s appeal was pending — presumably will now resume. In joint status reports filed with the lower courts on Jan. 9, DOL explained that the agency needs “additional time for various stakeholders to fully consider the next steps in this matter and to secure all necessary approvals before settling on a position.” However, the rule appears unlikely to take effect in its current form. The agency has already [indicated](#) that it expects to engage in further rulemaking on the scope of fiduciary investment advice under ERISA, but provided no substantive details. DOL expects to communicate the agency’s position to both courts on March 11, which may provide more clarity.

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- [What plan sponsors should know about DOL’s final fiduciary rule](#) (June 20, 2024)

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