

Annuities Trade Group Sues DOL Over Fiduciary Rule

The Federation of Americans for Consumer Choice Inc., a relatively new trade group that represents insurance agents and annuities sellers, has filed a lawsuit in a federal court against the Department of Labor and Secretary Marty Walsh in an attempt to vacate the DOL's fiduciary rule, which took full effect last week.

The lawsuit was filed in a Dallas federal court within the Fifth Circuit where the appellate court in 2018 struck down the DOL's prior fiduciary rule for regulatory overreach.

The Trump-era fiduciary rule, which replaced the previous version, reinstated the Labor Department's 1975 five-part test to determine who is a fiduciary.

"The new rule is the latest iteration of a decade old effort by the government to turn more financial professionals, including insurance agents, into fiduciaries subjecting them to more onerous regulatory requirements," the FACC said in a statement.

[In its complaint](#), the trade group argues that the text of the revised exemption is accompanied by a 64-page preamble, "much of which is devoted to the DOL's newly devised interpretation of who will be categorized as an investment advice fiduciary under the 1975 rule."

"This new interpretation carries forward the core problem the Fifth Circuit identified in vacating the fiduciary rule the first time: DOL's impermissible effort to rewrite and expand the definition of a fiduciary under ERISA and the [Internal Revenue Code]," the complaint states. "Pouring the same old wine into a new bottle does not change the result."

FACC believes the new interpretation is inconsistent with the statutory provisions of ERISA and the Internal Revenue Code, as well as being arbitrary and capricious. They are seeking to vacate the rule in its entirety and enjoin the DOL from implementing or enforcing it in any manner.

Kim O'Brien, CEO of FACC, said "the final interpretation adopted by the Labor Department places an unfair regulatory burden upon independent insurance agents who serve Middle America thereby limiting access by lower and middle income Americans to important guaranteed retirement products as well as retirement advice more generally."

"Insurance agents are heavily regulated by state insurance departments" and expressed concern over the rule creating a "costly and unnecessary new layer of regulation," O'Brien added.

In addition to the FACC, plaintiffs in the case include a number of independent insurance agents and agencies based in Texas that sell annuities and other insurance products.

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