

Publications

BREAKING: DOL Sends New Fiduciary Rule to OMB

ATTORNEYS & PROFESSIONALS

Jon Breyfogle

jbreyfogle@groom.com

202-861-6641

Jennifer Eller

jeller@groom.com

202-861-6604

Allison Itami

aitami@groom.com

202-861-0159

David Kaleda

dkaleda@groom.com

202-861-0166

Christine Keller

ckeller@groom.com

202-861-9371

Michael Kreps

mkreps@groom.com

202-861-5415

Jason Lee

jlee@groom.com

202-861-6649

David Levine

dlevine@groom.com

202-861-5436

Richard Matta

Thomas Roberts

troberts@groom.com

202-861-6616

George Sepsakos

gsepsakos@groom.com

202-861-0182

The Department of Labor (“DOL”) has sent a new, proposed fiduciary rule to the Office of Management and Budget (“OMB”) for review. The text of the proposal is not yet public. OMB must first conduct an interagency review process. The proposal will then be returned to DOL and published in the Federal Register. The entire process can be completed in a matter of weeks, but it typically takes a number of months.

This is DOL’s latest attempt to redefine “investment advice” after prior attempts were stymied by federal courts. The Fifth Circuit [vacated](#) DOL’s fiduciary rule in 2018 and restored a regulation from 1975 that defined investment advice using a five-part test. DOL then tried to reinterpret the five-part test through subregulatory guidance only to have a federal court [vacate the policy](#) in *ASA v. DOL*. Courts have also begun issuing decisions [rejecting](#) the broader re-interpretation of the five-part test advocated for by DOL. The agency’s decision to drop its appeal of the decision in *ASA v. DOL* prompted widespread speculation that the agency was preparing to propose a new regulation.

We will continue monitoring the proposal and will communicate updates as they develop. Please contact us if you have any questions.