

Publications

# BREAKING: DOL Sends New Fiduciary Rule to OMB

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The Department of Labor (“DOL”) has sent a new, proposed fiduciary rule to the Office and 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.