

DOL Drops Appeal in Case Invalidating Part of its Interpretation of Rollover Investment Advice

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PRACTICES ERISA and Other Benefits Litigation, Employee Benefits and Executive Compensation

On May 15th, the DOL dropped its appeal in *American Securities Association v. United States Department of Labor*, a Florida case concerning a challenge by a trade association of regional financial services firms to part of the DOL's interpretation of fiduciary investment advice. As previously noted [here](#), the decision is the latest development in a more than decade-long effort by the DOL to redefine what it means to be an investment advice fiduciary. Previously, the Florida federal district court invalidated the DOL's interpretation of fiduciary investment advice as it specifically relates to a recommendation to roll over ERISA plan assets to an IRA.

The case challenged the DOL's view that a recommendation to roll assets out of an ERISA plan to an IRA is part of the beginning of an intended future ongoing relationship that an individual has with an investment adviser, which could satisfy the requirement that the investment advice be provided to such individual on a "regular basis." As background, under the DOL's fiduciary definition provided in its 1975 regulation, the adviser must (i) provide individualized advice, (ii) for a fee, (iii) on a regular basis, (iv) pursuant to a mutual agreement, arrangement, or understanding, and (v) that advice will serve as a primary basis for the plan investment decision. Due to the DOL's decision to not appeal the case, the interpretation described above may no longer apply to IRA rollovers under the DOL's definition of an investment advice fiduciary.

The DOL has indicated that it plans to provide further guidance regarding fiduciary investment advice, including a re-proposed regulation, and we will continue to monitor developments in this area.

The opinion in *American Securities Association v. United States Department of Labor* is available [here](#).