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## ALSO IN THIS ISSUE –



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*"The Pension Specialists "*



# What's The Status Of Rollovers And Transfers After The DOL's New Fiduciary Rule?

There is a good chance the DOL's new fiduciary rule will never go into effect on September 23, 2024 or any later date. If so, your current IRA procedures for rollovers and transfers may continue to be used.

Two lawsuits commenced in May of 2024 challenge the DOL's new fiduciary rule because the regulation is unconstitutional and the DOL has not been given the authority to do what it has done.

In prior discussion of this fiduciary topic we have admitted our bias. We are not a fan of the DOL when it comes to the DOL wanting to expand its regulatory authority over IRAs. The DOL in the fiduciary regulation has given itself great authority to regulate IRAs. ERISA was never designed or written to give such power to the DOL regarding IRAs.

The DOL gave itself the authority to impose Title I ERISA penalties on an IRA custodian/trustee who fails to meet the new fiduciary rules even though ERISA expressly takes a different approach. Except for the right to administer prohibited transactions with respect to IRAs and to render some administrative services regarding SEP-IRA plans, SIMPLE-IRA plans and employer sponsored IRA plans, the DOL has limited authority to regulate IRAs. This is as it should be as IRAs are not normally related to an employer/employee relationship. Congress via ERISA has never given the DOL the express authority to regulate IRAs. If the laws need to be changed, Congress needs to act. There will have to be political compromises. The Democrats in Congress don't feel they have to make any compromises if the DOL does what the Democrats want done. The DOL did not compromise on very much in writing the new fiduciary regulation.

The purpose of this article is to provide basic information on two lawsuits filed against the DOL. There may well be many more cases filed against the DOL. There should be. If ever there was a case of over-reach by a governmental entity, this is it It will be interesting to see if the American Bankers Association or any state banking association commences a law suit. They should if they want to help their member banks.

Life insurance companies and agents sell annuity policies. There are special issues relating to annuities - those being sold to pension plan participants and IRA annuities. The insurance industry and the DOL are formidable foes. The insurance industry has strong lobbyists and many attorneys. Much stronger than the banking industry.

The first case was filed on May 2, 2024. It is Federation of Americans for Consumer Choice, Inc et al v. United States Department of Labor (DOL).

The second case was filed on May 24, 2024. It is American Council of Life Insurers (ACLI) et al v. United States Department of Labor (DOL).

**Continued on page 10**

## CWF's IRA/HSA Email Guidance Excess IRA Contributions – Impact of Higher Interest Rates

The tax laws are clear. In order to correct most excess contributions the IRA accountholder must withdraw the excess contribution plus the related earnings. The earnings are taxed in the year the excess contribution is made.

The related earnings amount was often minimal when interest rates were low such as when they were below 1%. That is not the case when the interest rate is much higher such as 5%. The amount of interest now earned by an excess contribution is material - to the IRS and to the IRA accountholder.

An IRA accountholder who makes an excess contribution owes a 6% excise tax unless it is corrected by April 15 or October 15 of the following year. It can be corrected by withdrawing the excess contribution and the related earnings or it can be recharacterized. The excise tax is not an immaterial amount when the excess contribution was $7,500. It is $450 ($7,500 x 6%).

Here is an illustration. Mara contributes $7,500 on April 1, <u>2023</u> for tax year 2023. On April 1, <u>2024</u> she comes into the IRA custodian because her tax accountant has told her she has made an excess contribution. She withdraws the $7,500.

A mistake has been made because she has not withdrawn the related earnings. The excess contribution of $7,500 had been in her IRA for an entire year. The interest rate being paid on this deposit was 5%. The interest earned by this deposit was $375. She should have withdrawn $7,875, but she only withdrew $7,500.

The IRS wants to be taxes on the $375. She needs to include the $375 in her income. She also needs to pay the $450 excise tax for her excess contribution or explain that it has been corrected.

The IRS position is that she owes $450 as she did not withdraw $7,875. She withdrew $7,500.

We believe she needs or wants to withdraw the earnings amount of $375 as soon as possible. This means she will not have an excess contribution situation for 2023 or 2024.

Her accountant needs to determine if her deadline to correct her excess contribution was April 15, 2024 or October 15, 2024. For purposes of this article it assumed she has a deadline of October 15,2024.

It is assumed that she previously filed her 2023 tax return on time. She (or her accountant) will need to file an amended tax return for 2023. Form 5329 should be prepared showing that an excess contribution of $7,500 was made but that it was withdrawn in 2024 so the 6% excise tax of $450 is not owed. However, the $375 of earnings must be added to her 2023 tax return and she must pay the tax owing.

One would think the accountant would have informed the individual of the need to also withdraw the related income and that the $375 is taxable for the year the excess contribution was made.

If the IRS would take the position her correction deadline was April 15, then CWF believes she is able to take the position she withdrew most of the excess contribution. She withdrew $7,143 as an excess contribution and the related earnings were $357. The $357 should have been included on her 2023 tax return and she should file an amended return. She will owe the 6% excise tax for 2023 on the $357. This is $21.42. By withdrawing the $357 in 2024 she will correct this excess contribution for tax year 2024.

The purpose of this article is to remind IRA representatives that to correct an excess IRA contribution situation for the current year requires the IRA accountholder to withdraw the excess contribution plus the related earnings. The earnings are to be included in the individual's income for the year the contribution was made. Many time the tax accountant will not remind the individual of this requirement that the related income must be withdrawn and that such income is to be included on the tax return for the year the contribution was made.

Code "P" is to be inserted in box 7 of Form 1099-R to report the withdrawal of an excess contribution made in 2023 but withdrawn in 2024. The "P" informs the IRS and the individual that the income was income for 2023. The income amount is to be reported in box 2 of the Form 1099-R.

## Why Charging A Fee For An IRA Transfer Is Reasonable?

An IRA accountholder should be appreciative when their IRA custodian/trustee is willing to transfer for a reasonable fee their IRA funds to another IRA custodian.

There is to be no IRS reporting when IRA funds are transferred, The has been no taxable event as a transfer transaction occurs between the two financial institutions.

The remitting institution does not report the IRA transfer distribution on the person's Form 1099-R. The receiving institution does not report this transfer contribution on the Form 5498.

The individual is <u>not</u> required to explain the transfer on his or her tax federal income tax return.

An institution unwilling to participate in a transfer requires the individual to take a withdrawal which is a taxable event. An individual is eligible to rollover this distribution if certain tax rules are met. In some cases the individual will be ineligible to rollover the distribution. There may well be tax hardships.

The individual will need to explain these transactions on his or her tax return.

A individual is almost always better-off if the transaction is structured as a transfer versus a distribution and rollover.

A transfer requires that each IRA custodian perform certain tasks. As surprising as it is, the IRS has never defined what is required of the two financial institutions to have a nonreportable transfer. The IRS should help the public and furnish some better guidance.

As discussed in an adjacent article, the IRA custodian which has transferred the funds to the successor IRA custodian must determine that the transfer check was negotiated and that the transfer was completed. Not often but sometimes the transfer check will be lost in the mails or mishandled by the successor IRA custodian/trustee. The individual will certainly want to confirm that the funds were transferred from one institution to the other. However, it the institution transferring the funds which must confirm the transfer check was negotiated.

In summary, an IRA custodian assisting a customer with an IRA transfer should charge a reasonable transfer fee. It performs important duties.

## Confirming That An IRA Transfer Has Been Completed

It is important that an IRA custodian/trustee which issued a transfer check to another IRA custodian/trustee or IRA annuity issuer confirms that the transfer check it has issued to the successor IRA custodian/trustee or IRA annuity issuer has been received and negotiated. Normally there are no issues as the transfer check is cashed promptly. One method is that one confirms the transfer check was negotiated. The second method is to have the receiving institution send you an email or fax notifying you that the transfer check has been negotiated and that the transfer has been completed.

At times a transfer will not be completed because the transfer form becomes lost in the mail or it is mishandled at the receiving IRA custodian/trustee. This is an undesired situation. There has been no transfer if the transfer check has not been negotiated. The funds thought to be transferred are still IRA funds.

## Revising The CWF IRA Plan Agreement For Transfers

The following provision will be added to the IRA plan agreements.

The transfer is deemed complete once we have mailed the transfer check to the successor IRA custodian/trustee (or IRA annuity issuer). We understand that your IRA has been closed. If for some reason the transfer check is not negotiated by the successor IRA custodian/trustee (or IRA annuity issuer) you have the responsibility to inform us of this fact. For example, the transfer check may have been lost in the U.S. mails or the check may have been lost or mishandled at the successor IRA custodian/trustee (or IRA annuity issuer). We have the right to assess a $50 fee if we must reinstate your IRA for income tax reporting reasons or for another reason. We have no duty to pay interest with respect to these transferred IRA funds.

## CWF's Email Guidance – Roth Contribution Error

Q-1. We had a Roth contribution made last year incorrectly by the bank. We removed the contribution and are sending a corrected 5498, but the customer earned interest on the extra funds for almost a year. Since it was our error, do we have to adjust the interest as well? We were going to leave it, but I don't want to cause an IRS issue on the additional interest.

A-1. The tax laws applying to an excess contribution do not vary depending upon whether the excess contribution was made because of a mistake made by the bank or the Roth IRA accountholder.

The tax law requirement is - the excess contribution and the related earnings must be withdrawn or the 6% excise tax will be owed. If the earnings are not withdrawn, that amount is treated as being an excess.

The tax law is - the earnings related to an excess are to be included in the person's income for the year in which the contribution was made. This is 2023. The bank will report this distribution on the 2024 Form 1099-R. The reason code in box 7 should be a "JP" and box 2a should show the income amount. Normally box 2a is left blank for a Roth IRA distribution, but not when an excess contribution is withdrawn. Your customer should file an amended tax return for 2023.

See the attached draft of a newsletter article that discusses that because of the higher interest rates that it is now more important that this income be reported properly.

## CWF Email IRA Guidance – Rollovers By An IRA Beneficiary

Q-1. We had a Beneficiary Traditional IRA owner come in and ask to have her IRA funds transferred to her personal checking account and the IRA closed. She came In a few days later and said that we misunderstood her, and she wanted to transfer her Beneficiary IRA to another Institution.

Do we have any options at this point? My understanding is no, the distribution cannot be undone.

Does she have any options at this point? My understanding is she is not able to complete a rollover since it's a Beneficiary IRA. Is that correct?

I'm going to recommend that she consult her tax advisor to minimize the tax hit, but I wanted to make sure there wasn't another option on our end.

A-1. This situation arises fairly often. A beneficiary who has withdrawn inherited/beneficiary IRA funds many times does not understand the tax consequences of taking a distribution.

As you mentioned, the law for many years was - a non-spouse beneficiary was ineligible to make a rollover contribution. No exceptions. It did not matter if the distribution mistake occurred because of the beneficiary or an IRA custodian.

The law was changed by the SECURE Act 2.0 effective for 2023 and subsequent years. If someone other than the non-spouse beneficiary makes a mistake which leads to the distribution, then the beneficiary will have the right to rollover such distribution.

The IRS has stated that a beneficiary who was paid a distribution by mistake is to use the late rollover certification rules and is able to rollover that distribution.

A transfer occurs between two IRA custodians. Did she inform ANB of the name of the other IRA custodian? Was there ever a mention that a transfer form was needed?

The IRS has adopted the following approach when a person believes that she is entitled to use the special late rollover rules. The Individual may complete and sign a

**Continued on page 5**

Rollovers,
Continued from page 4

late rollover certification form. She must decide If she will complete this late rollover certification form. I have attached CWF's form which is virtually identical to the IRS form. A bank is allowed to rely on this form and accept this rollover. The bank does not report this late rollover in box 2 of the Form 5498, but reports it box 13a (late rollovers). She is allowed to complete her tax return claiming the amount distributed is not taxable because she made a late rollover. If the IRS wants to follow up with her to see if she was eligible to claim late rollover treatment, the IRS may do so.

I do not know how good of a customer she is. ANB could help her and agree to accept her late rollover if it is felt that the bank might have made a mistake. ANB should not accept this late rollover if it believes she made the mistake and not ANB. If ANB would accept the late rollover, she could keep the funds at ANB or there could be a proper transfer.

Or, ANB could inform her that she should discuss this situation with her tax adviser, but it appears she could make the late rollover with the other IRA custodian.

Not all banks will accept late rollovers.

## CWF's IRA/HSA Email Guidance – Power Of Attorney

Q-1. We have a request from the POA of one of our customers requesting us to not only distribute the customer's RMD early but to then turn around and close the IRA. We haven't come across this situation so we looking for your guidance.

A-1. What authority has been given to the power of attorney?

If the POA has an unlimited right to take one or more IRA distributions, then the POA has the authority to close the IRA. The POA is supposed to be acting on behalf of the IRA accountholder.

In the situation you mention, the POA could close the IRA in one lump sum distribution because the RMD is a portion of the lump-sum distribution.

Q-1A. I do understand that they could close the IRA with one distribution instead of the two. There is a section of the POA documents that references IRAs. I've included this snapshot.

*17. To select various payment options under any retirement plan or IRA in which I participate, including plans for self-employed individuals and individual retirement accounts, make voluntary contributions to such plans, make so-called "roll-overs" of plan benefits into other retirement plans, borrow from such plans if authorized by the plan, sell assets to or purchase assets from the plan if authorized by the plan, and make withdrawals from the plan for my benefit.*

A-1A. I am not understanding your question.

The POA has the authority to take a distribution from IRA.

The POA might be taking a distribution so that a rollover contribution may be made with another IRA trustee. I don't believe the POA owes the bank any explanation why the distribution is being taken.

If you think the POA may be taking the distribution for an improper reason, then I presume the bank has a policy as to how the bank responds.

I don't believe the fact that a POA has been granted to a person prevents the bank from contacting the IRA accountholder to see if she or he agrees with the POA's decision to close the entire IRA. But you should check internally as to what the bank's policy is.

## Likely Cost Of Living Adjustments For Social Security Beneficiaries For 2025

It is expected that the COLA Adjustment for 2024 will be in the range of 2.6-3.5 for 2024. Social security benefits in 2025 will be increased by this rate.

The inflation rate has decreased in 2024, but it still well above the desired 2% rate. The federal reserve has indicated it plans only one more rate cut in 2024.

Set forth is a table setting forth the COLA adjustments since 1975. The COLA adjustments were very large from 1975-1982. The COLA adjustments from 2009-2020 were very small. This was the period after the Great Recession of 2008-2009. The COLA adjustments at 5.9 and 8.7 were quite large again for 2021 and 2022. The COLA adjustment for 2023 was 2.3.

The COLA adjustment for 2024 will be based on the change in the CPI-W for July, August and September of 2024. Set forth is chart showing the calculations for 2022 and 2023. The CPI-W for May 2024 was 3.3%.

| CPI-W for – | 2022 | 2023 |
|---|---|---|
| July | 292.219 | 299.899 |
| August | 291.629 | 301.551 |
| September | 291.854 | 302.257 |
| Third quarter total | 875.702 | 903.707 |
| Average (rounded to the nearest 0.001) | 291.901 | 301.236 |

301.236/291.901 = 1.03198 rounded to 1.032

### Social Security Cost-Of-Living Adjustments

| Year | COLA | Year | COLA | Year | COLA |
|---|---|---|---|---|---|
| 1975 | 8.0 | 1995 | 2.6 | 2015 | 0.0 |
| 1976 | 6.4 | 1996 | 2.9 | 2016 | 0.3 |
| 1977 | 5.9 | 1997 | 2.1 | 2017 | 2.0 |
| 1978 | 6.5 | 1998 | 1.3 | 2018 | 2.8 |
| 1979 | 9.9 | 1999* | 2.5 | 2019 | 1.6 |
| 1980 | 14.3 | 2000 | 3.5 | 2020 | 1.3 |
| 1981 | 11.2 | 2001 | 2.6 | 2021 | 5.9 |
| 1982 | 7.4 | 2002 | 1.4 | 2022 | 8.7 |
| 1983 | 3.5 | 2003 | 2.1 | 2023 | 3.2 |
| 1984 | 3.5 | 2004 | 2.7 | | |
| 1985 | 3.1 | 2005 | 4.1 | | |
| 1986 | 1.3 | 2006 | 3.3 | | |
| 1987 | 4.2 | 2007 | 2.3 | | |
| 1988 | 4.0 | 2008 | 5.8 | | |
| 1989 | 4.7 | 2009 | 0.0 | | |
| 1990 | 5.4 | 2010 | 0.0 | | |
| 1991 | 3.7 | 2011 | 3.6 | | |
| 1992 | 3.0 | 2012 | 1.7 | | |
| 1993 | 2.6 | 2013 | 1.5 | | |
| 1994 | 2.8 | 2014 | 1.7 | | |

* The COLA for December 1999 was originally determined as 2.4 percent based on CPIs published by the Bureau of Labor Statistics. Pursuant to Public Law 106-554, however, this COLA is effectively now 2.5 percent.

## CWF's IRA/HSA Email Guidance – Charging An HSA Fee

Q-1. Just reaching out as we have a question on if we can charge a fee to Health Savings Accounts. We have bill pay with our online banking system and if they don't actively use it after enrolling they get a $5.00 fee each month. We are wondering if we are allowed to charge Health Savings Accounts this fee or is there a rule that we cannot charge a service fee to Health Savings Accounts?

A-1. A bank is allowed to charge an HSA one or more fees as long as those fees are reasonable.

I would want to know more about the fee. How well do you disclose this fee to the HSA owner?

Would every HSA be subject to this fee?

An HSA is best when its a reimbursement account and not a direct payment account. Is the bank wanting a person to pay quite often medical expenses directly from the HSA?

I admit to not knowing much about the bill pay services. Could a person be paying both medical bills and none-medical bills?

I am curious, does the bank realize revenue from a third party if customers use the bill pay service but must pay a fee if the service is not used a certain amount?

Q-1A. The bill pay fee is disclosed in our terms and conditions and then if they enroll in bill pay they also get an email that states this fee.

A customer only gets the $5 00 fee from their HSA if they enrolled in bill pay and selected their HSA as the account to pay from.

Our HSA accounts are set up with a debit card but then they have access on their online banking to transfer funds or set up bill pay payments.

Yes the bill pay can be set up to pay all kinds of bills because it can also be set up to pull funds from the customers checking account.

A-1A. I understand the HSA owner makes the decision whether or not he or she will enroll in bill pay. The HSA Owner is not required to use bill pay. So, the bank may assess a fee if she or he elects to use bill pay. You are disclosing the fee and other terms and the HSA owner agrees.

The bank will need a system to know which distributions are made by bill pay because it will need to report on the person's Form 1099-SA any distribution made from the HSA including any distribution from the HSA using the bill pay system.

## Understanding – Converting/Rolling Over Taxable Funds In A 401(k) Or Other Plan Such As An ESOP Into A Roth IRA

Some participants of a 401(k) plan or other qualified plan will wish to move their taxable funds (or a portion) in a 401(k) plan or other qualified plan into a Roth IRA. A person may have various reasons why she or he wants to do this. The person wants any income earned in the future to be tax free when withdrawn. The person may be ineligible to make an annual Roth IRA contribution because their MAGI is too high.

A Roth IRA conversion occurs when funds in a traditional IRA, SEP-IRA or SIMPLE IRA are distributed and moved in to a Roth IRA. This Roth IRA conversion is a taxable event.The Roth IRA custodian/trustee completes box Box 3 and reports the amount converted. The traditional IRA custodian/trustee completes the Form 1099-R to report the distribution. The IRS custodian will prepare a Form 1099-R indicating that the distribution is taxable. The Form 1099-R does not expressly indicate the person made a Roth IRA conversion. The individual will need to include the distribution amount in their income. The Individual completes Part II of Form 8606 to indicate he or she made a conversion.

A quasi-Roth conversion occurs when taxable funds in a 401(k) plan or other qualified plan are distributed or deemed distributed and moved into a Roth IRA. The plan participant instructs that he or she wants a direct rollover into their Roth IRA. This is a taxable event. The individual will need to include the distribution amount in their income.

The plan administrator completes the Form 1099-R in a special fashion. The plan administrator completes box 1 and 2a with the amount being distributed and converted . Box 2 is normally completed with a 0.00 when the funds are being directly rolled over into a Traditional IRA. In both cases box 7 is completed with a reason code G (direct rollover).

The Roth IRA custodian completes the Form 5498 for the Roth IRA and shows the contribution as a rollover. Normally a rollover is done so the deemed distribution is not taxable. In this case, the individual must complete his or her tax form (lines 4a and b) and indicate that the amount is included income even it was rolled over because it went into a Roth IRA ( a quasi-conversion). The IRS then can determine the individual made a quasi-conversion. The IRS does not have the individual complete Part II of the Form 8606.

## CFBP Issues Report On HSAs 5/24

A financial institution serving as an HSA custodian/ trustee has many of the same duties as a financial institution serving as an IRA custodian/trustee. The IRS has the reporting forms 1099-SA and 5498-SA which must be completed.

The Consumer Financial Protection Board (CFPB) issued a modest report (17 pages) summarizing HSAs in 2023. Everything seems political these days and that applies to HSAs also. HSAs are a political subject. The tax laws provide tax benefits to both individuals and employers. This report mentions that HSAs have a triple tax benefit for the HSA owner. There are tax benefits associated with the contribution, associated with earnings of such contributions and tax benefits associated with withdrawing funds to pay a qualified medical expense. This report does not discuss the tax benefit an employer receives when it contributes funds to an employee's HSA.

The CFPB is not a fan of HSAs, but this subject now deserves attention as there were 36 million HSAs in 2023. Such HSAs held over 116 billion in assets.

Many employers now sponsor HSA qualifying HDHP coverage. 24% of employers now sponsor an HSA qualifying HDHP up from 11% in 2013. There were 11.8 million HSAs in 2013.

The number of HSAs will continue to grow.

The CFPB report discusses the large service providers of HSA products and services. It does not have much discussion of the smaller HSA service providers. The four largest service providers account for over 60% of the 116 billion market. The four largest service providers are Health Equity with 22 billion in assets, Optum with 20 billion in assets, Fidelity with 20 billion in assets, and HSA Bank with 11 billion. Optum is a subsidiary of the United Health Group. HSA Bank is a division of Webster Bank.

The main point of the CFPB report is - there can be fees and costs associated with HSAs which harm customers because any fee assessed will reduce the amount the HSA owner will have available to pay qualified medical expenses.

The CFPB also discusses that for most HSAs the interest rate paid for HSA funds is very low. An exception is Fidelity, it is paying 2.69%. There is no discussion that some HSAs have large balances and are invested in wealth management departments.

The CFPB has limited discussion of the fact that the HSA owner has the authority to move their HSA to an HSA custodian/ trustee of their choice even though an employer does have the right to initially select the HSA custodian/trustee. No doubt that an employer may try to influence a person's decision to where their HSA will be held. The CFPB report has no discussion of the DOL's activities with respect to HSAs. The DOL s position is - any fees must be reasonable or there would be a prohibited transaction.

## Select HSA Fee Information

The following chart covering some basic fees set forth in the report. These fees do not appear to be unreasonable.

**4 Largest HSA Trustees in 2023**

| Common Fees | Health Equity | Optum | Fidelity | HSA Bank |
|---|---|---|---|---|
| Monthly Account Maintenance Fee | $0-$3.95 | $0-$3.95 | $0-$4.00 | N/A |
| ATM Transaction Fee | N/A | $2.50 | N/A | N/A |
| Outbound Transfer Fee | N/A | $20.00 | N/A | N/A |
| Printed Statement Fee | $1.00 | $1.50 | N/A | $1.50 |
| Account Closing Fee | $25.00 | N/A | N/A | $25.00 |

Source: Publicly available disclosures from provider websites

DOL's New Fiduciary Rule
Continued from page 1

The Complaints set forth the following causes of action. The requested relief is that the final regulation and the amendments to PTE 84-24 are to be vacated totally and the DOL is to be permanently enjoined from taking any action to implement, apply or enforce the new rule.

Here are the causes of action for the first case.

A. The DOL has exceeded its authority under ERISA, the code, and the APA in promulgating the 2024 Fiduciary Rule and Amendments to PTE 84-24.

B. The 2024 Fiduciary Rule and Amendments to PTE 84-24 violate the APA because they are arbitrary, capricious, and irreconcilable with the text of ERISA and the code.

On 5/21/2024 FACC filed its motion for a preliminary injunction suspending the enforcement of the DOL's fiduciary rule.

On 5/31/2024 the U.S. Chamber of Commerce filed its amicus brief.

Here are the causes of action (counts) for the second case.

Count 1. The rule's expansion of fiduciary status is contrary to law and in excess of statutory jurisdiction.

Count 2. The rule is contrary to law and arbitrary and capricious because is unlawfully creates private rights of action under state law.

Count 3. The rule is arbitrary and capricious because it is the product of unreasoned decision making.

Count 4. The rule violates the first amendment as applied to truthful commercial speech by financial salespersons.

The relief sought:

a) Declare the Rule arbitrary, capricious, an abuse of discretion, and contrary to law under 5 U.S.C. § 706(2)(A); declare the Rule contrary to constitutional right under 5 U.S.C. § 706(2)(B); and declare the Rule promulgated in excess of statutory jurisdiction, authority, or limitations under 5 U.S.C. § 706(2)(C);

b) Set aside and vacate all components of the Rule in its entirety as non-severable;

c) Preliminarily and permanently enjoin the Department and all its officers, employees, and agents from implementing, applying, or enforcing the Rule;

d) Stay the effective date of the Rule under 5 U.S.C. § 705;

e) Award Plaintiffs their costs and reasonable attorney's fees as appropriate; and

f) Grant such further and other relief as this Court deems just and proper.

We will keep you updated on the status of these two cases and any additional cases. We expect the district court to grant the motion for a preliminary injunction. It is scheduled to go into effect on September 23, 2024, but won't if the preliminary injunction is granted.

The DOL wrote the rule so that the court could strike certain portions of the rule, but other parts would survive. We expect the court will vacate the entire rule. There are simply too many things wrong with the final rule. Presumably the case will be appealed to the Fifth Circuit Court of Appeals and then to the U. S. Supreme Court.

One will need to determine how PTE 2020-02 is affected if the fiduciary rule is vacated in its entirety. This will be discussed in a future newsletter article.