

WILMERHALE

December 8, 2017

David W. Ogden

Mr. Lyle W. Cayce
Clerk of Court
U.S. Court of Appeals for the Fifth Circuit
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Re: *Chamber of Commerce of the United States of America, et al. v. United States Department of Labor, et al.*, No. 17-10238

Dear Mr. Cayce:

On behalf of the ACLI and Chamber Appellants, we write pursuant to Federal Rule of Appellate Procedure 28(j) in response to the government's letter of November 30, 2017, informing the Court that the Department of Labor has adopted a final rule postponing the applicability date of certain exemption conditions under the Fiduciary Rule.

Despite this delay rule, Appellants continue to have substantial need for an expeditious resolution of their challenges to the Fiduciary Rule. Key parts of the Fiduciary Rule took effect on June 9, 2017, including the imposition of fiduciary obligations on members of the insurance and financial services industries. *E.g.*, ACLI/NAIFA Reply Br. 4-5. Those obligations are imposing direct, substantial, and continuing burdens on Appellants' members. The Department itself has recognized that, pursuant to those currently effective requirements, "firms will make efforts to adhere to" the new fiduciary "standards." 82 Fed. Reg. 16,902, 16,907 (Apr. 7, 2017). The delay rule does not remove those requirements or stem their mounting costs. To the contrary, the delay rule confirms the Department's expectation that regulated entities will "work 'diligently and in good faith to comply' with their fiduciary obligation during the [extended] Transition Period." 82 Fed. Reg. 56,545, 56,554 (Nov. 29, 2017).

In light of ongoing compliance burdens, Appellants submit this response to clarify that the delay rule does not diminish the urgency of this appeal.

Respectfully submitted,

/s/ David W. Ogden
David W. Ogden

Counsel for ACLI Appellants

cc: All counsel by CM/ECF