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## Circuit Courts of Appeal Reach Different Conclusions on the Department of Labor's Fiduciary Rule

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In a March 15, 2018 decision in *Chamber of Commerce of the United States v. United States Department of Labor*, the United States Court of Appeals for the Fifth Circuit vacated in its entirety the so-called "Fiduciary Rule" promulgated by the Department of Labor ("DOL") in 2016, holding that the rule is inconsistent with the Employee Retirement Income Security Act and that the DOL lacked statutory authority to impose the restrictions and requirements the rule created. Two days earlier, in *Market Synergy Group, Inc. v. United States Department of Labor*, the United States Court of Appeals for the Tenth Circuit had reached a different conclusion in a decision that addressed only part of the Fiduciary Rule, holding that the rule's treatment of fixed indexed annuities was not arbitrary and capricious, and is therefore valid. The two decisions create uncertainty about the viability of some elements of the Fiduciary Rule that ultimately may need to be resolved by the Supreme Court.

Attached is the firm memorandum discussing both Circuit Court decisions.

Should you have any questions about the memorandum, please feel free to contact the persons identified at the end of the memo or your regular Cahill contacts. Cahill regularly publishes memoranda covering a variety of legal developments. To access copies and search our archive, [click here](#)

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