

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FEDERATION OF AMERICANS FOR
CONSUMER CHOICE, INC., *et al.*,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF LABOR, *et al.*,

Defendants-Appellants.

No. 24-40637

AMERICAN COUNCIL OF LIFE INSURERS,
et al.,

Plaintiffs-Appellees,

FINANCIAL SERVICES INSTITUTE, *et al.*,

Intervenor Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF LABOR, *et al.*,

Defendants-Appellants.

No. 24-10890

CONSENT MOTION TO EXTEND ABEYANCE

Pursuant to Federal Rule of Appellate Procedure 27, the government respectfully moves to extend the abeyance in these consolidated appeals for an additional 60 days, to and including October 14, 2025. Appellees in Case No. 24-40637 consent to this motion. Appellees and intervenors-appellees in Case No. 24-10890 consent to this motion.

1. This appeal involves a rule and certain regulatory amendments issued by the U.S. Department of Labor (DOL) to, among other things, amend the test for determining when an individual falls within the statutory definition of a “fiduciary” to an ERISA plan based on their “render[ing] investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan.” 29 U.S.C. § 1002(21)(A)(ii); 26 U.S.C. § 4975(e)(3). Two district courts issued universal stays of the effective date of these regulatory changes. The government appealed both district court decisions.

2. Due to the change in administration on January 20, 2025, DOL is now under new leadership. On April 15, the Court placed these appeals in abeyance to permit new agency officials to familiarize themselves with the challenged regulatory actions and underlying issues. The Court extended the abeyance for 60 days on June 17.

3. DOL has informed us that additional time is needed to determine how to proceed in these appeals. Accordingly, the government respectfully requests that the abeyance be extended for a further 60 days to October 14, 2025.

4. Counsel for all plaintiff/intervenor groups have authorized us to state that they consent to the relief requested in this motion. Consistent with this Court's June 17 order, the plaintiff/intervenor groups further request that the deadline for their response briefs be set "for the later of October 28, 2025, or two weeks after the expiration of the stay of proceedings." The government consents to that requested deadline.

Respectfully submitted,

MICHAEL S. RAAB

/s/ Michael Shih

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AUGUST 2025

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 306 words.

/s/ Michael Shih
MICHAEL SHIH

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2025, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system.

I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system

/s/ Michael Shih
MICHAEL SHIH