

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 CONTINUE ABEYANCE OF
CONSOLIDATED APPEALS PENDING
RECONSIDERATION OF RULE**

Pursuant to Federal Rule of Appellate Procedure 27, the government respectfully moves to extend the abeyance in these consolidated appeals pending reconsideration by the U.S. Department of Labor (DOL) of the rule at issue. 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 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 recent change in administration on January 20, 2025, DOL is now under new leadership. The Court placed these appeals in abeyance to permit new agency officials to familiarize themselves with the challenged regulatory actions and underlying issues. The abeyance will expire on June 16, 2025, as extended.

3. We have been informed that DOL requires additional time to decide how to proceed in these appeals. Accordingly, the government respectfully requests that the abeyance be extended for an additional 60 days.

4. Counsel for all plaintiff/intervenor groups have authorized us to state that they consent to this request. They further request that the deadline for their response briefs be set “for the later of August 29 or two weeks after the expiration of the stay of proceedings.” The government consents to that requested deadline.

Respectfully submitted,

MICHAEL S. RAAB
MICHAEL SHIH

/s/ Laura E. Myron
LAURA E. MYRON
STEVEN H. HAZEL
(202) 514-4819
Attorneys, Appellate Staff
Civil Division
U.S. Department of Justice
950 Pennsylvania Ave. N.W.
Room 7228
Washington, D.C. 20530

JUNE 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 297 words.

/s/ Laura E. Myron
Laura E. Myron

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 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/ Laura E. Myron
Laura E. Myron