AARP Seeks Rehearing on Court Decision in Fight to Protect Retirement Savings

Dramatic Legal Motion Part of Non-Profit’s Ongoing Fight for Conflict Free Investment Advice

WASHINGTON, DC—AARP asked a federal appeals court today to reconsider its surprise decision to reject a previously-approved investment rule that would protect the retirement savings of millions of Americans. Anticipating that the U.S. Department of Labor (DOL) itself might not request a rehearing, AARP now has filed a motion asking the full Fifth Circuit for permission to intervene in the case and, in addition, to reconsider the adverse decision made by the smaller three judge panel.

“AARP is not giving up on our fight to make sure that hard-earned retirement savings have strong protections from conflicts and hidden fees,” said Nancy LeaMond, AARP’s Chief Advocacy and Engagement Officer. “Many financial advisors already give advice with the public’s best interests in mind. But the recent court decision allows some financial advisors to provide guidance based on what’s best for their pocketbooks, not the consumers’.”

In March, the U.S. Court of Appeals for the Fifth Circuit vacated the DOL fiduciary rule that would help ensure that advisors give retirement investment advice that is in the best interest of investors. The Fifth Circuit’s three-judge panel’s split 2-1 ruling ran counter to several previous federal court decisions favoring retirement savings protections, including a decision by the U.S. District Court for the Northern District of Texas and a decision by the Tenth Circuit Court of Appeals.

Government estimates are that individual investors lose an estimated $17 billion dollars annually because of hidden fees and conflicts of interest.

In its 16-page filing today, AARP wrote that “the (Fifth Circuit) decision creates an irreconcilable intra-circuit split (within the Circuit itself) and conflicts with Supreme Court precedent.”

In addition, the filing said: “The panel’s decision also presents an exceptionally important issue because it robs workers, retirees, and their families of crucial protections for their retirement investments.”

For years, AARP has strongly supported the fiduciary standard that calls for retirement-fund financial advice that is in the customer’s best interest – and not subject to conflicts. This contrasts with the more lax “suitability” standard that has enabled some advisors to make recommendations that are in their financial interests, rather than those of their clients.

AARP members, many financial institutions, and the general public have backed the “conflicted advice” rule and its protections. In a 2013 AARP survey of more than 1,400 adults with money in either a 401(k) or 403(b) plan, more than nine in 10 (93 percent) said they favored requiring retirement advice to be in their best interest. At the same time, fewer than four in 10 indicated that they would trust advice from an advisor who is not *required* by law to provide that advice in the best interest of the investor.

“It takes hard work to save adequately for retirement,” LeaMond said. “Consumers deserve financial advisors who work just as hard to protect what they have earned.”

The Securities and Exchange Commission (SEC) is also currently considering regulations related to investment conflicts of interest.

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