

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 FOR FURTHER EXTENSION OF ABEYANCE IN LIGHT OF LAPSE OF APPROPRIATIONS

Pursuant to Federal Rule of Appellate Procedure 27, the government respectfully moves to extend the abeyance in these consolidated appeals by a further 30 days.

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.

3. At the end of the day on September 30, 2025, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. The same is true for several other Executive agencies, including the federal appellants.

4. Absent an appropriation, Department of Justice attorneys and employees of the federal appellants are prohibited from working, even on a voluntary basis, excepted in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342.

5. Undersigned counsel for the Department of Justice therefore requested that the abeyance—which was set to expire on October 14, 2025—be extended until Congress restored appropriations to the Department. Consistent with the Court’s prior orders, the government further requested that the deadline for the plaintiff/intervenor groups to file their response briefs be set for two weeks after the expiration of the abeyance.

6. The Court denied the government’s motion but sua sponte extended the abeyance by a further 14 days. The abeyance will expire on October 28, 2025.

7. As of the date of this filing, appropriations to the Department of Justice have not yet been restored, and the Department does not know when funding will be restored by Congress. The government respectfully requests that the abeyance be extended by a further 30 days, to and including November 28 (November 27 is a legal holiday). The government further requests that the deadline for the plaintiff/intervenor groups to file

their response briefs be set for two weeks after the expiration of the abeyance.

8. We contacted counsel for all plaintiff/intervenor groups to obtain their position on the relief requested in this motion. All groups consent to the requested extension subject to the two-week extension of the deadline for filing their response briefs.

9. Therefore, although we greatly regret any disruption caused to the Court and the other litigants, the government hereby moves for a further 30-day extension of the abeyance in light of the lapse in appropriations.

Respectfully submitted,

MICHAEL S. RAAB

/s/ Michael Shih

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OCTOBER 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 484 words.

/s/ Michael Shih
MICHAEL SHIH

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 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