

---

## Five senators want the fiduciary rule to return from 'vacation'

---

By No Author      Thu, May 24, 2018

---

*'If the Department does not appeal the Fifth Circuit's decision, or it is not overturned on appeal, what will the Department do in the future to protect retirement savers from conflicted advice?' the senators asked.*

---

In a letter to Labor Secretary Alexander Acosta, five Democratic senators have protested his department's failure to appeal the Fifth Circuit Court of Appeal's May 7 decision vacating the Obama-era fiduciary rule to the U.S. Supreme Court.

In the letter, Senators Cory Booker (D-NJ), Sherrod Brown (D-Ohio), Patty Murray (D-WA), Elizabeth Warren (D-MA), Ron Wyden (D-OR) asked Secretary Acosta to answer three questions:

1. Since the Fifth Circuit's ruling, what has the Department done to inform savers of their lack of protections from conflicted retirement advice, now that the Department is no longer enforcing the conflict of interest rule?
2. Does the Department plan to defend its authority to protect retirement savers, as courts outside of the Fifth Circuit have affirmed, and appeal the Fifth Circuit's ruling to the Supreme Court? If not, why not?
3. If the Department does not appeal the Fifth Circuit's decision, or it is not overturned on appeal, what will the Department do in the future to protect retirement savers from conflicted advice?

"Allowing the Fifth Circuit's decision alone to dictate the Department's policy sets a dangerous precedent by failing to acknowledge the clear difference of opinion among the courts of appeals regarding the Department's authorities," the senators wrote. "The Department should defend its authority and this important rule by appealing the Fifth Circuit's decision to the Supreme Court."