SAVE OUR RETIREMENT

Delay Could Spell Death for Fiduciary Rule

The practical effects of telling the Department of Labor to add another comment period on its rule for retirement investment advice

Backers of this proposal say they're just trying to give interested parties a final opportunity for input. Experts who have studied the rulemaking schedule and the way the process works agree that this could make it impossible for DoL to finish the job. Bloomberg and the New York Times have reached the same conclusion; and some financial industry leaders admit they are hoping the measure will have that effect.

Statements from experts:

Lily Batchelder - Professor of Law and Public Policy, NYU School of Law
"Releasing a new proposal and allowing 15 more days of comments may sound innocuous but it is not. Each time DOL issues a new proposed rule, a tremendous amount of time goes into responding to every comment (whether constructive or not), crossing every "t", and dotting every "i". The rule's opponents will also inevitably say 15 days is much too little time and ask for the comment period to be extended. **The practical effect of requiring DOL to issue a new proposed rule and hold a new comment period is therefore to block them from finalizing the rule during this administration. Millions of retirement savers would lose out in the process.** So too will the many investment advisers and brokers providing quality advice, who find it hard to compete on the basis of putting their clients' best interest first when an astounding 75 percent of savers believe, incorrectly, that all financial advisers already have to act in their best interest."

Sidney Shapiro - Professor of Administrative Law, Wake Forest University
"Administrative law has two basic values--procedural accountability and agency effectiveness… The proposal pending in Congress to require the Department of Labor (DOL) to hold another notice and comment process for its Fiduciary Rule ignores this important second principle. **An additional notice and comment period will likely delay the DOL rule another year or more. Efforts to describe this delay as neutral or one that does no harm are therefore simply not true.** DOL has already engaged in a substantial notice and comment process."

Mercer Bullard - Professor of Law, University of Mississippi
"The Department of Labor has given the industry one of the longest, most complete reviews in the history of administrative rulemaking. To reward this unprecedented effort with further delay is worse than death by a thousand cuts."

Quotes from news media and industry:

Bloomberg (**news story** 12/8)
"**Even a one-month delay could complicate the White House's goal of completing the rules and making them enforceable before President Barack Obama leaves office in January 2017**." It "would give brokers another chance to comment on the plan, and would compel Labor to study that feedback. The agency would then have to consider those comments as it crafts a final rule. If the rules haven't been implemented by the time Obama leaves office, the next administration, particularly a Republican one that opposes the effort, could undo them before they can be enforced.

New York Times (**editorial** 11/5):
"The Democrats' request, if granted, would interrupt this process and very likely make it impossible to finalize the rules before the end of 2016, leaving the next administration to grapple with them anew (if a Democrat wins) or ditch them (if a Republican wins)."

Financial Services Institute (**news brief** 12/10)
"**Congressional critics of the Labor Department's proposed fiduciary rule hope to use an amendment to a federal spending bill to delay or kill the measure. Industry groups are upbeat about this approach's chances."**

The seven organizations that launched the SaveOurRetirement.org campaign – AARP, AFL-CIO, AFSCME, Americans for Financial Reform, Better Markets, Consumer Federation of America and Pension Rights Center – are joined by a diverse collection of financial entities, public interest groups, civil rights leaders, labor unions, consumer groups, professional organizations and others in support of the Department of Labor (DOL)'s efforts to update and strengthen the outdated rules adopted 40 years ago that apply when individuals receive professional advice about their retirement investments.

For further information on the issue or this document, contact Jim Lardner at Americans for Financial Reform. 202-466-1854 / jim@ourfinancialsecurity.org