Requiring the DOL to Wait for the SEC Is a Groundless Tactic to Derail the Rule

Some argue that the Department of Labor (DOL) should actually be prohibited from moving forward with its updated fiduciary duty rule until the Securities and Exchange Commission (SEC) fixes its own regulations governing securities advice. This is nothing more than a delay tactic from those who want don't want the DOL rule to see the light of day. It has no basis in law or fact.

Only the DOL, not the SEC, has the authority to close the loopholes in ERISA rules.

- In 1974, Congress tasked the DOL, not the SEC, with the primary responsibility for overseeing retirement plans, protecting retirement assets, and establishing the rules for those who give retirement investment advice.
- When Congress made this decision, it was fully aware of the SEC and its mission, but it recognized the uniquely important status of retirement assets, and the need to afford them special protections. Those assets determine the quality of life that Americans will have for years after leaving the workforce, and they receive preferential tax treatment.
- To help safeguard retirement accounts, Congress established a strong fiduciary standard in a separate law known as the Employee Retirement Income Security Act (ERISA), administered by the DOL. That standard requires advisers to act solely in the best interest of retirement plans and their beneficiaries, and it applies to a broad range of retirement assets, not just securities.
- The SEC has no authority or ability to administer ERISA, update ERISA rules, or even regulate all of the assets that are often the subject of retirement investment advice. It operates under an entirely different set of laws, to achieve different purposes.

Holding the DOL hostage to the SEC's rulemaking agenda means indefensible delay.

- The SEC's own rules on investment advice have suffered from huge gaps for decades. Brokers under the SEC's jurisdiction are currently subject to a much weaker suitability standard, not a fiduciary duty, even when they provide securities investment advice.
- Although the SEC has studied this problem for years and seems to acknowledge the need for change, the agency has not yet determined whether or how it might proceed, and a notice of proposed rulemaking is not imminent. Thus, forcing the DOL to wait for the SEC means years of delay. And the wait would be pointless, since regardless of what the SEC does, the DOL will still have to close the loopholes under ERISA rules to protect retirement savers.
- In sharp contrast to the SEC, the DOL has completed a proposed rule after years of hard work and deliberation and has submitted it to OMB for review. Within a matter of months, the rule can be issued for public comment and then finalized.
- In doing so, the DOL has gone out of its way to consult and coordinate with the SEC to avoid any potential conflicts. Both SEC Chairwoman White and DOL Assistant Secretary Borzi have spoken publicly about their ongoing communications.
- All Americans need, expect, and deserve better protections against retirement investment advice that does not serve their best interests, and they shouldn't have to wait any longer.

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