

AFL-CIO



Wall Street's Strategy to Kill the Fiduciary Rule Forever

In their campaign to kill the Department of Labor (DoL) “fiduciary” rule, which updates the standards for retirement investment advice, some financial industry players and their allies in Congress have called on DoL to re-propose the rule and provide yet another 15 to 30 day comment period before it is finalized. They claim this “compromise” will allow the rule to go forward while letting “interested parties” make sure DOL has “gotten it right.”

Make no mistake: This so-called compromise is designed to put an end to the rule forever. Here's how:

- The Congressional Review Act (CRA) gives Congress 60 legislative days after a major regulation has been published in the *Federal Register* to review the regulation and, if opposed, to pass a joint resolution of disapproval that will block it forever. **That is, should that resolution become law, the CRA provides not just that the rule is nullified, but that the agency is prohibited from reissuing the rule or any substantially similar one, except under authority of a subsequently enacted law.**
- There is no question that Congressional Republicans plan to pass such a resolution—regardless of the content of the final rule. But as long as DoL fulfills its pledge to amend the rule to address the legitimate concerns raised, it is doubtful that opponents would have the votes to override a presidential veto.
- That's why opponents are pushing this so called “compromise;” it would ensure that the CRA's 60 day review period runs beyond this Congress — and, most importantly, beyond this Administration. They are betting on the next election. They are betting that our next President will not veto the resolution of disapproval. **Sound far-fetched? This is exactly what happened at the end of the Clinton Administration when industry successfully killed workplace ergonomics standards. They delayed the rule so that President George W. Bush became the ultimate decision maker, leaving workers to this day without these needed workplace protections or any prospect for such protections in the foreseeable future.**

- The combination of the CRA’s mandated 60-day Congressional review and the relatively few legislative days on the 2016 congressional calendar means the final rule must be cleared by OMB’s Office of Information and Regulatory Affairs (OIRA) by mid-May at the absolute latest. But, OIRA typically requires 95 days to review a rule of this magnitude, which means it must receive the rule by mid-February. Even assuming the possibility of an expedited OIRA review of 50 days, DoL would have to provide the rule to OIRA by the last week in March.
- Therefore, between now and mid-March, DoL must complete its comprehensive review of the thousands of comments already received during the last two comment periods, reach a final decision on all aspects of the rule, draft a detailed explanation of those changes, and make any necessary revisions to the Department’s extensive, previously-issued Regulatory Impact Analysis. Adding another 15- to 30-day comment period means that DoL must take precious time to scale all these hurdles yet again.
- This “compromise” puts DoL in an untenable position. In the unlikely event that the Department is able to meet the CRA deadline, the inevitable industry lawsuit will claim it improperly rushed the process, giving short shrift to the comments received. And if it takes longer, any hope to complete the rule in this Administration vanishes.

Protect the Retirement Security of Your Hard-Working Constituents. Oppose Another Comment Period.

For more information:

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