

PIABA: “BREAKNECK” RUSH TO UNDERMINE FIDUCIARY RULE IN WANING DAYS OF CURRENT ADMINISTRATION SHOULD BE SLOWED DOWN UNDER NEW WHITE HOUSE

Stampede for Action Before White House Switches Hands Leads to Cancellation of Public Input Meetings, Including One to Have Been Held with PIABA

WASHINGTON, D.C. – December 16, 2020 – The U.S. Department of Labor (DOL) is proceeding with unseemly haste in the final days of the current Administration to short-circuit public comment related to its undermining of the fiduciary standards protecting American retirement savers, according to the Public Investors Advocate Bar Association (PIABA).

PIABA is among the organizations that were scheduled to meet with OMB prior to the issuing of the regulation. However, that meeting was cancelled in order to rush the poorly crafted and consumer endangering DOL proposal along in the rulemaking process.

Commenting on the OMB cancellation and DOL rush to finalize the fiduciary rule, PIABA President and Columbus, Ohio, attorney David Meyer said:

“The securities industry received an early Christmas present from the outgoing Administration when the White House hastily cleared the way for the DOL to lower the standard of care of investment advice fiduciaries, and this represents a dramatic and unprecedented reversal of the intent of Congress in enacting ERISA. Workers and retirees deserve far better. They deserve to have their retirement savings protected, and they should be able to rely on those they have gone to for investment advice.”

“The Administration and the DOL has done this at breakneck speed. The DOL only provided 30 days to comment on the proposal. It provided only a three-day period to submit a request to testify at its public hearing. The proposed new exemption was with OMB for less than three weeks. After holding meetings with two industry groups, OMB cancelled meetings scheduled with consumer groups, including PIABA, and finalized its review of the rulemaking.”

“Earlier this year, the Department of Labor reinstated its flawed 5-part test used to determine who is a fiduciary under ERISA, a federal law that creates standards for retirement plans in the US. That test creates vast loopholes, leaving many who provide investment advice to workers and retirees free from the fiduciary duties ERISA imposes. For those who do manage to fall within the definition, the DOL has now adopted a new exemption which would allow those giving advice to follow the standards set forth by the SEC under Regulation Best Interest (Reg. BI) rather than the higher fiduciary standard set forth under ERISA.”

“PIABA urges the incoming Administration to delay the effectiveness of the rulemaking and to review the steps taken by DOL to push through this gift to Wall Street. The DOL should adopt a new regulation, which would eliminate the need to satisfy a five-part test before someone providing investment advice would be deemed a fiduciary. There should be no need to establish that investment advice has been given on a regular basis, or pursuant to a mutual agreement that the advice will serve as the primary basis for the

investment decision. Any individual providing investment advice to a retirement investor for a fee should be deemed an Investment Advice Fiduciary and held to the highest fiduciary standards.”

“To the extent the DOL establishes an exemption which would allow otherwise prohibited conduct, such an exemption should not lower the fiduciary obligations of Investment Advice Fiduciaries. Retirement investors deserve to have their retirement savings protected, as was intended by the enactment of ERISA. Instead of lowering the standard for retirement advice to that under Reg. BI, which the SEC itself conceded was not a fiduciary standard, PIABA urges that the DOL instead adopt rules that apply the fiduciary standard to those who provide investment advice to the nation’s retirees and workers.”

ABOUT PIABA

The mission of the Public Investors Advocate Bar Association is to advocate for equal access to justice for investors in all forums. PIABA works to promote fairness in the rules governing dispute resolution for investor claims against securities and commodities brokerage firms, registered investment advisory firms, and their associated representatives. PIABA also works toward creating, improving, and enforcing statutes, rules, regulations, case law, and policies designed to promote investor rights and to prevent misconduct by those who sell investments to the public. www.piaba.org

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