



Independent thought leadership

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DOL Investment Advice Fiduciary Rules: Summary of Possible “Derailment” Actions

Authority	Action	Likelihood
Congressional Review Act (CRA)	Repeal	Not applicable. Only applies to regulations within 60 days of being issued.
Administrative Procedures Act (APA)	Repeal	Unlikely. Lengthy process and repeal could be viewed as arbitrary and capricious.
APA Good Cause Exception	Delay applicability date	Possible, but unlikely. Only applicable if the “agency for good cause finds” that compliance would be “impracticable, unnecessary, or contrary to the public interest.”
Executive Order 12866	Repeal	Unlikely. If categorized as a significant regulatory action, would require a lengthy cost-benefit analysis to prove.
Midnight Rule	Postpone effective date	Not applicable. Only applies for those rules not yet in effect.
DOL Proposed Rule	Delay applicability date	Possible, but subject to required notice and comment procedures.
DOL	Refuse to enforce	Possible, but would not stop firms from moving forward with compliance.
Legal injunction	At least six court cases at federal district court levels	Unlikely. A court’s decision is generally limited to the federal circuit in which the decision is rendered. Nationwide injunctions are an exception, but possible.
HR 5982 Midnight Rules Relief Act	Would amend CRA to allow Congress to disapprove of rules submitted during the last six months of an outgoing presidential administration	Not applicable. Would only apply to regulations submitted to Congress for review within 60 legislative days of the end of a presidential term. Rules submitted by May 2016. Midnight Rules Relief Act of 2016
HR 355 Protecting American Families’ Retirement Advice Act	Delay for two years the effective date	Unlikely. Introduced 01/06/17. Referred to committee. Must move out of committee, pass both the House and Senate and be signed into law.
HR 5983 Financial CHOICE Act	Would eliminate the fiduciary rule and prevent the DOL from issuing a new rule until after the SEC issues its uniform standards rule	Unlikely. Introduced 09/09/16. Referred to committee. Must move out of committee, pass both the House and Senate and be signed into law. Financial Choice Act