



Financial Reform Newsletter - February 24, 2017

A Victory for America's Main Street Consumers Ripped Off By Financial Predators, An Updated DOL Best Interest Fiduciary Rule State of Play



A Victory for America's Main Street Consumers Ripped Off By Financial Predators

Let's start with the most important fact about the Consumer Financial Protection Bureau (CFPB): it is the most successful consumer protection agency in the history of the country. In just a few short years, it has

returned almost \$12 billion to more than 29 million Americans ripped off by financial firms. That's why it was created: protect American consumers of financial products, go after the financial crooks and make them pay for their rip offs. By any measure, the CFPB is a wild success.

Finally, an effective consumer cop on the Wall Street beat! If only we had that before the 2008 financial crash! Think of how many fraudulent subprime loans and other consumer rip offs would have been prevented.

That's exactly why the financial industry hates the CFPB. The \$12 billion that the CFPB has made the industry pay back to consumers would have stayed in their pockets and juiced their bonuses. (That's why they don't mind spending tens of millions of dollars on lawyers, lobbyists and PR baloney - the potential payoff is many billions of dollars for them.)

That's why Wall Street banks and other opponents of financial reform and specifically the Dodd Frank Act (which created the CFPB) have worked endlessly to try to kill, gut and weaken the CFPB. Their political allies in Congress have filed bill after bill to change the CFPB structure and limit its powers. The industry's purchased allies in academia, "think tanks" and "consulting" firms have turned out bogus "report" after fictional "paper" purporting to identify how horrible the CFPB is and the terrible things it has supposedly done. Their lobbyists, trade groups and PR puppets have relentlessly politically attacked the agency. And, of course, their lawyers have repeatedly sued the CFPB, throwing a kitchen sink of baseless claims at it hoping something, anything would stick.

Consumer advocates, including Better Markets, have fought back these efforts for years now and all of them have failed, until a few months ago. The industry succeeded in getting a three judge panel of the DC Circuit Court of Appeals to rule that a key protection for the CFPB Director was unconstitutional. With tortured reasoning and highly dubious constitutional interpretations, this 2 to 1 decision overruled the Dodd Frank provision that allowed the President to fire the CFPB Director only "for cause."

This panel said the President could fire the Director for any reason at all.

Why does that matter? The CFPB's effectiveness is because it was carefully structured in the Dodd Frank law to insulate it from political interference by Wall Street's political allies. That's why the law provides for a single Director with a five-year term who can only be fired for cause and the CFPB's funding is independent. The "for cause" termination provision prevented an industry-influenced President from removing the Director because he or she was doing the job too well, i.e., enforcing the consumer protection laws against the biggest, most powerful and politically connected banks in the country without fear or favor.

Industry cheered the decision and hoped that President Trump would fire the Director and install an industry-friendly Director rather than a consumer-protector.

But, the CFPB appealed the panel decision to the full DC Circuit Court of Appeals, a so-called "en banc" review. The result: opponents of the CFPB were dealt a massive setback last week when the court granted the CFPB's request to have the full court review the panel decision. It also vacated the panel decision pending its own decision expected in a few months from now.

This is a great victory for America's consumers of financial products and every person who does business with a bank or other financial firm. Hopefully, the order vacating the misguided and wrongly decided panel decision and scheduling an "en banc" review by all the judges on the DC Circuit Court will lead to a decision that protects the Director and America's consumers.

An Updated DOL Best Interest Fiduciary Rule State of Play

Last week, we reviewed the state of play in the intense and ongoing battle over the Department of Labor's fiduciary duty rule, including the terrific court opinions that rejected each and every one of the industry's legal baseless attacks. But events are moving so quickly, we thought you might like another update.



Here are the latest developments.

First, on February 17th, in yet another court victory, the federal district court in Kansas issued a final judgment in favor of the DOL, essentially confirming the court's findings and conclusions issued on November 28th. In that earlier opinion, the court rejected all of the arguments that the industry advanced in a bid for a "preliminary" or temporary injunction.

Second, on February 9th, the DOL submitted a proposal rule to OMB that would delay the rule reportedly for 180 days. Better Markets and other members of the Save Our Retirement coalition have been meeting with OMB staff to argue that any delay of the rule would be completely unjustifiable, indeed, unlawful. The vast rulemaking record compiled by DOL over several years of careful consideration, including the rigorous economic analysis showing that Americans struggling to save for retirement are losing more than \$17 billion every year - by extremely conservative estimates - because their advisers are allowed to recommend overpriced, underperforming investments to line their pockets with hefty commissions and fees.

So every day the rule is delayed beyond its applicability dates, Americans say

goodbye to more than \$46 million of hard-earned savings - every day! And the rulemaking record shows that the costs of the rule to industry pale by comparison. On that record alone, the delay proposal should be canned. But that's not all. The three detailed, substantive, carefully reasoned court opinions should remove any doubt that any delay would lack merit. In rejecting calls for preliminary injunctions while the merits of the cases move forward, the courts held that the public would suffer too much harm to justify any delay. That directly rebuts what the new administration is saying and trying to do to the best interest rule.

The OMB should reject the delay proposal on all of these grounds, as it must under the law and Executive Order governing its rule review. Unfortunately, we won't be betting any money on the OMB making the right decision. The OMB works for the President and he has already ordered the DOL to delay and then kill the rule. He didn't look at any facts or consider the massive years-long record supporting the best interest rule. The President just consulted with his Wall Street and finance advisers, who he has installed to the most senior economic and financial policy making positions in the US government, and then ordered the rule to be killed.

If indeed the OMB signs off on DOL's proposal to delay the rule and DOL releases the proposed rule for comment, we and others will fully engage in the rulemaking process to defeat it. That means submitting comment letters, meeting with the DOL, and, then, exercising all available means to challenge it in court. If they want to rob the American people of the most basic protection for their retirement savings, then, as the twitter-in-chief has said, "see you in court."



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