



Rep. Tom Emmer on House Committee Hearing

Broadcast: July 14, 2017 • Duration: 5:15

CHAIR:

The gentleman from Minnesota is recognized for five minutes.

REP. TOM EMMER:

Thank you to the Chair and thanks to the panel for being here today. I want to focus on one specific area, probably because of my professional background. Why don't we start with Mr. Halloran. Would you agree with Secretary Acosta that the private right of action, the right to sue advisors and their firms, is the biggest flaw with the rule, the DOL rule?

MR. HALLORAN:

It is certainly, if not the biggest, among the biggest, yes.

REP. TOM EMMER:

There appears to be some misunderstanding of the litigation risk under the DOL fiduciary rule. Many people say that the litigation risk will not arise until January 1st of 2018, but I've heard this may not be correct. My understanding is that a lack of clarity and certainty regarding the rule has created concern about a very substantial litigation risk for advisors starting on June 9th. Again, Mr. Halloran, could you explain this?

MR. HALLORAN:

It doesn't get a lot of press or publicity, but actions by class have always been present in ERISA rule. By taking ERISA law and applying that to IRA accounts, as an example, you're now exposing financial advisors, even as of June 9th, for potential class action litigation, because just giving rise to advice of moving out of a 401k, for example, rolling over to an IRA. So yes, that's a real and present concern, absent any private right of action that arises from the best interest contract.

REP. TOM EMMER:

You believe it's a real concern starting on June 9th?

MR. HALLORAN:

Oh, yes.

REP. TOM EMMER:

Also, as long as I've focused on you, why is the litigation risk so great under the rules as it's constructed? I'm just going to tell you, as a lawyer, 1,000 pages makes it a huge litigation risk.

MR. HALLORAN:



So that's a great point. It sounds very simple. We want a best interest standard. We want to act in the best interest of our clients. The rule is 1,000 pages. The preamble was 204 pages. There are many, many ambiguities we're still in deal with, notwithstanding changes that have been made, with, frankly, not a whole lot of guidance yet, either. So there's more concern about what we don't know, necessarily, than what we do know. We don't really have case law to look to right now to understand the actual consequences of this private right of action and these kinds of actions. All we can look to is what we see in other businesses, and it's a significant concern. And unfortunately, in order to get that body of case law, you're going to have to have a lot of people suffer in courts of law, and you're going to have to pay a lot of attorneys, which I suppose the bar is probably not too disappointed with.

REP. TOM EMMER:

Mr. Lombard, my understanding is, and I'm hoping because of your relationship with the current chair of SFMA, my understanding is that SFMA has conducted a survey of its members about the effects of the rule. Are you familiar with that at all?

MR. LOMBARD:

I'm aware that there's been surveys. There's been several of them. I'm not sure I can quote their exact findings.

REP. TOM EMMER:

Can you give me an idea? Do you know what the client experience has been to date and what effect the rule has had on their ability to serve their clients?

MR. LOMBARD:

Well, as I said, there's already been disruption. There's limited product selection in certain areas, specifically fixed income. Some of the members of SFMA have stopped selling mutual funds. Some have stopped offering commission-based brokerage accounts in the retirement space. As I also pointed out, costs are rising as many firms ask their clients to move into fee-based accounts, which are more expensive than traditional brokerage accounts.

REP. TOM EMMER:

I think a lot of people agree that the time has come for some kind of fiduciary best interest rule in this industry. But the rule as it's drafted—and I covered one area that's a big concern to me, and there are others, and unfortunately the way it works around here is we have to step in and out. So I'm assuming that people have covered some of these. But I guess I'd like to ask the panel, if the rule stays in effect, what changes would you like to see to make it more workable to allow advisors to sell products and services that they offer their clients? And for me, it's the lower end, the entry-level folks that we're all concerned with. We want to make sure they get the right advice. Why don't we just start on this end?

PANEL MEMBER:

So if the rule remains in effect, there are five specific things that the FSI would want to see changed in the rule. One would be streamlining the BICE documentation and disclosure. Second is creating a single best interest standard applicable to all investors. Third is revising and broadening the reasonable compensation rules. Fourth is revising the rules for IRA rollovers. And fifth is expanding the rules' grandfathering provisions.

REP. TOM EMMER:



And my time has run out, it looks like, so I'll be in touch with the rest of the panel. Thank you.

CHAIR:

Gentlemen, this time has expired. With that, the chairman recognizes the gentleman from New Jersey.

This transcript was independently produced by MN-06 Watch for accountability and archival purposes.

Source: (July 14, 2017)

Archived: February 06, 2026

Source URL: <https://youtu.be/B5lmaxCn8Ws>

For questions or corrections: mn06watch@gmail.com