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2016: A Huuuuge Year for the Fiduciary Standard

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Agenda



- DOL
 - Conflict of Interest Rule – A Reprisal
 - Other initiatives
- SEC
 - Adviser regulation
- Congress
 - Dodd-Frank repeal
- Case law review
- Practical realities – Tough to turn back

Department of Labor – Fiduciary Rule Status



As of today:

- Most of rule goes into effect Apr. 20, 2017
- Remaining requirements for BICE, Principal Transactions Exemption effective Jan. 1, 2018

Factors to consider in 2017:

- Executive order
- Congressional opposition
- Legal challenges
- New DOL leadership

Executive Order Likely

- During campaign, Trump said he would
 - ‘Cut regulations massively’
 - Repeal Dodd-Frank
 - Put moratorium on other new rules
 - Reduce the power of the Federal Reserve
 - No stated position on DOL, SEC fiduciary initiatives
 - A campaign adviser says DOL rule should be repealed
- As president, has executive authority to suspend implementation of new rules



Congressional Options for Killing Fiduciary Rule



Available:

- Traditional legislative process
- Spending riders

Possible:

- Budget reconciliation (fast-track)

Gone:

- Congressional Review Act (fast-track)

Court Options...



- Lawsuits filed in 4 federal district courts challenging DOL rule
 - Suits seek vacature, preliminary injunction
 - Two dismissed, appeals filed
 - Legal process expected to continue into 2017
- Trump administration could drop defense of rule
 - 3rd party could intervene to carry on defense
- Supreme Court appeal possible if circuits split

DOL Options



Options to slow, modify or overturn fiduciary rule:

- Issue interpretive guidance
- Further delay compliance deadline while considering a revised rule
- Notice and public comment period to:
 - Revoke the rule
 - Modify definition of fiduciary
 - Modify PTEs
- Revised rule also subject to new legal challenge

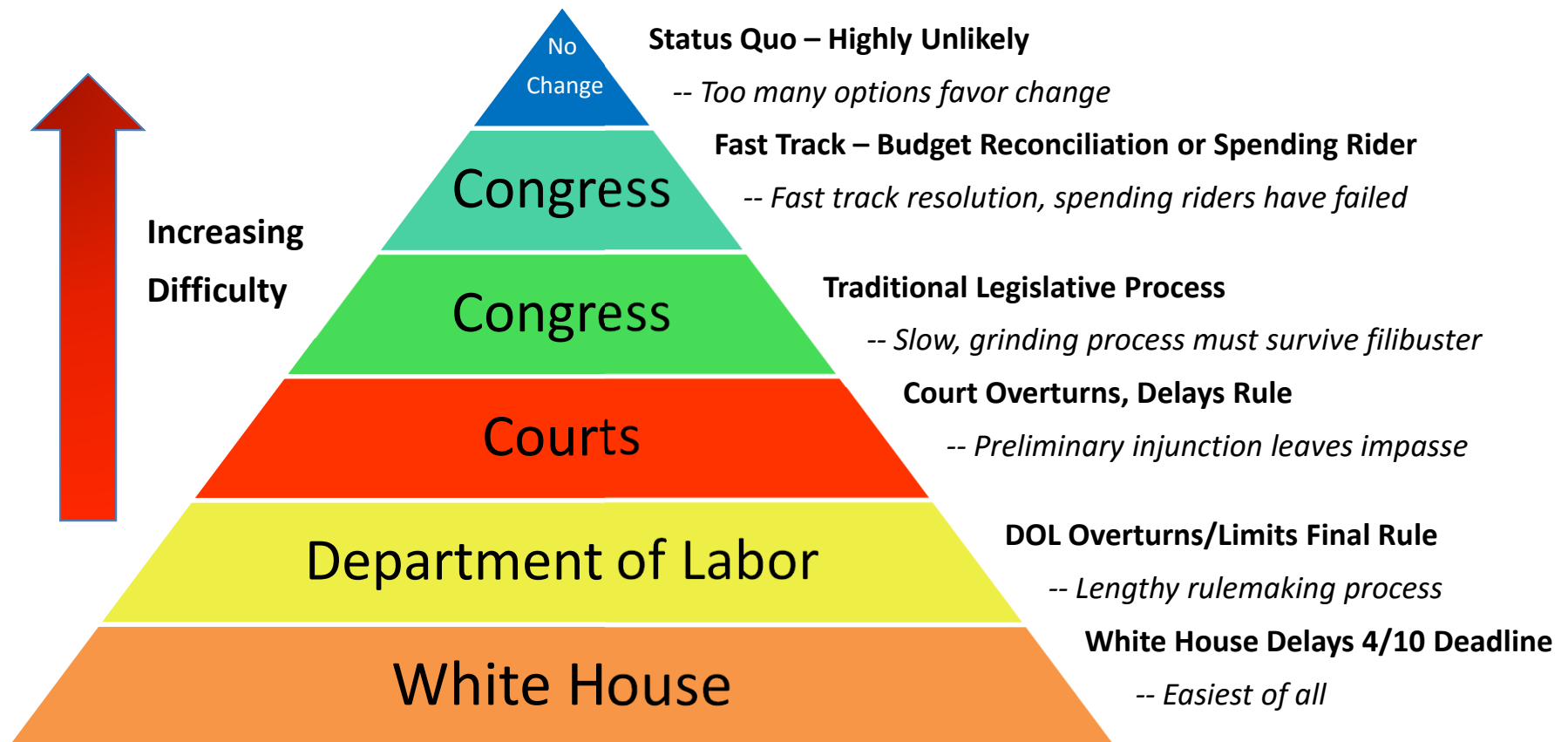
DOL Leadership



- Andrew Puzder named DOL Secretary
- CEO of fast-food conglomerate
 - Carl's
 - Hardee's
 - Green Burrito
- Has expressed concerns with
 - Increasing minimum wage
 - ACA
 - Paid sick leave laws
- No record on pension issues



Fiduciary Rule Scenarios



Other DOL Initiatives



- Proposed
 - Target-date fund name and marketing
 - Form 5500 revisions
 - Auto IRAs sponsored by counties, cities
- Pending (not proposed yet)
 - RFI on annuity option in QDIAs
 - Lifetime income illustrations

Securities & Exchange Commission – Turnover Coming



Mary Jo White, Chair
Leaving soon



Kara Stein
Term ends in June



Michael Piwowar
Term ends 2018



Republican
??



Democrat
??

Are SEC Rules in Limbo?

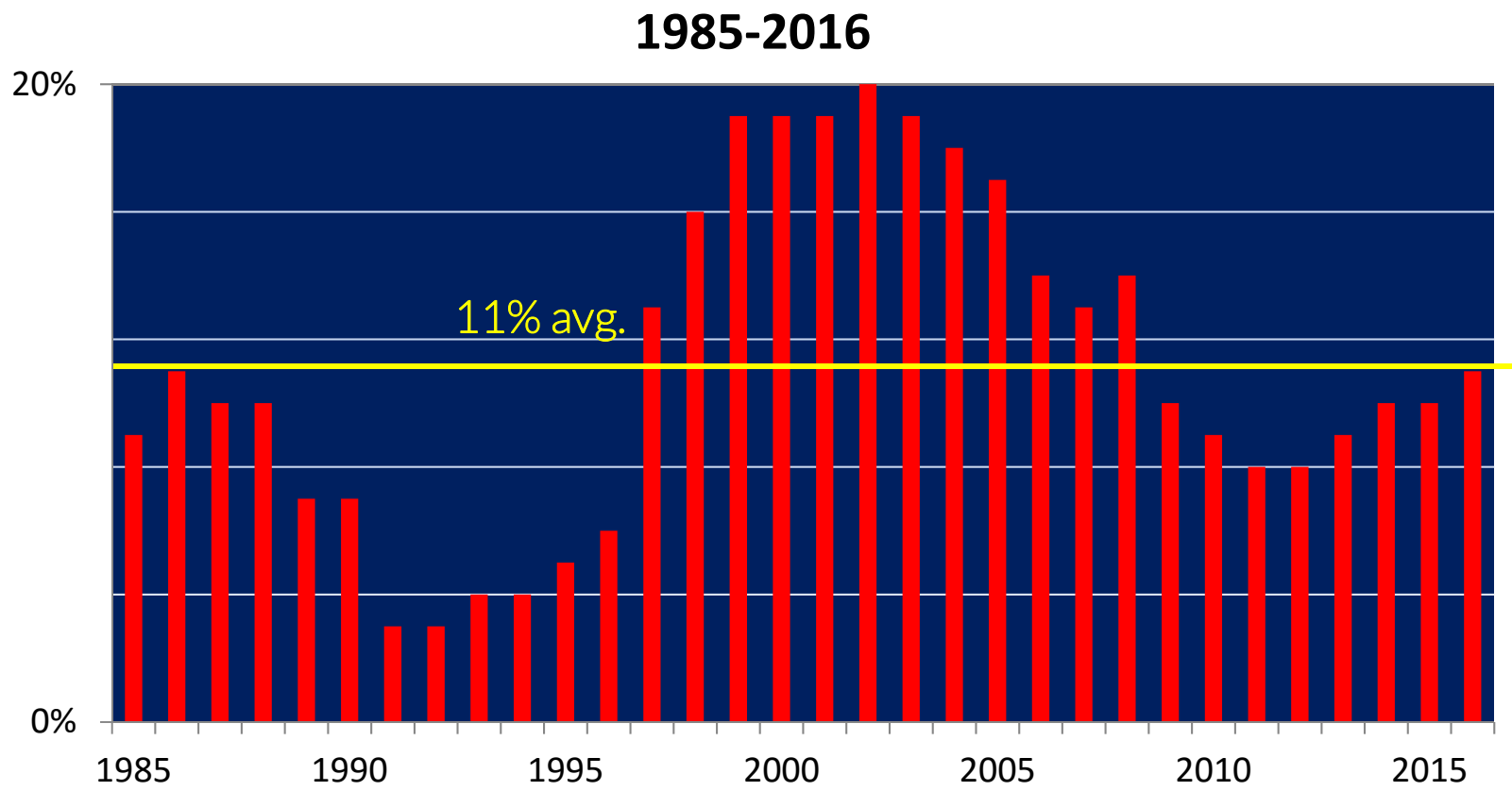


- Proposed
 - Target-date fund name and marketing
 - Business continuity plans for RIAs
- Pending
 - Uniform fiduciary rule for BDs/RIAs
 - 3rd party compliance assessments
- Interim
 - Principal transactions exemption for dual registrants

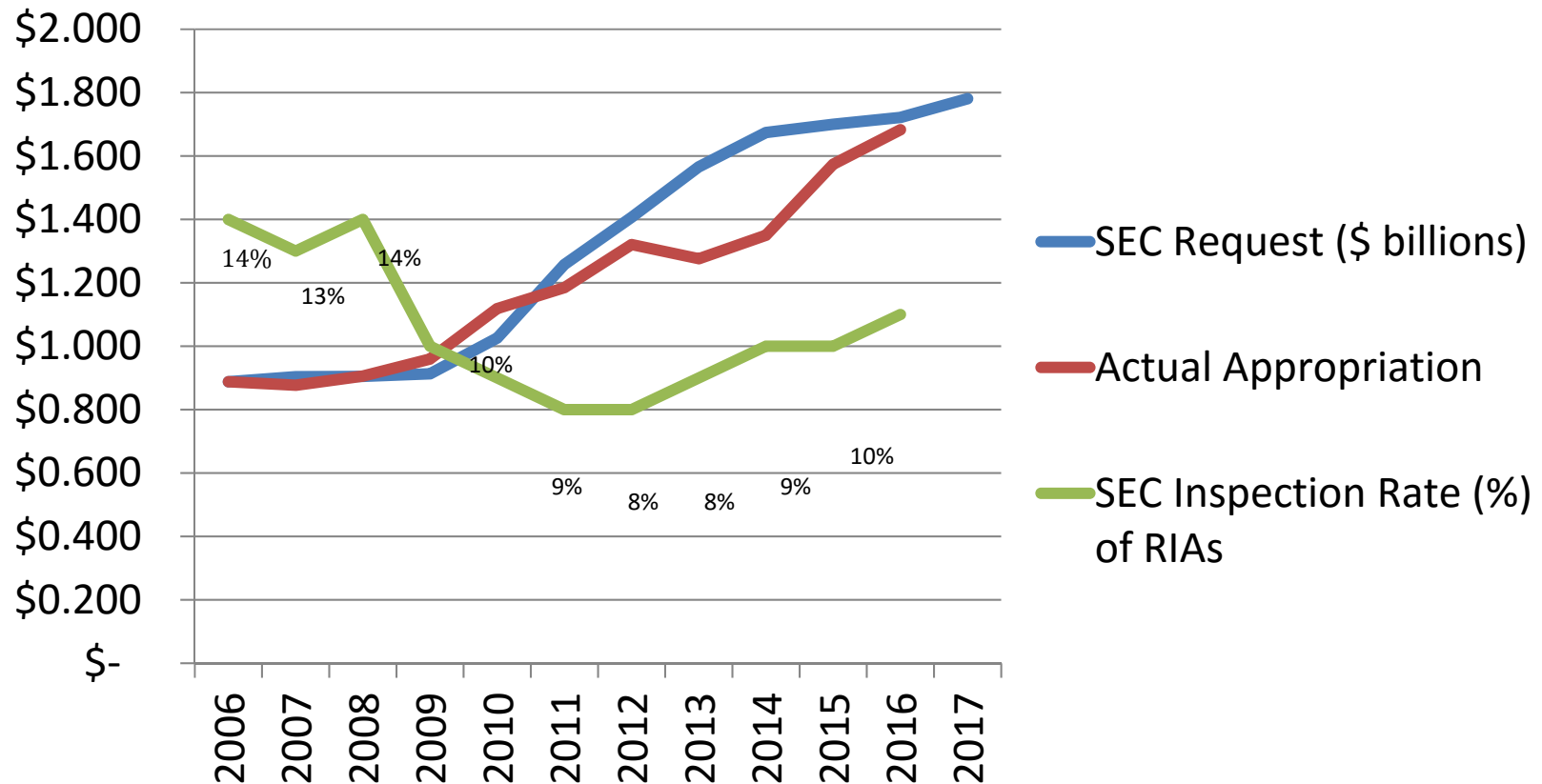


SEC's Annual Inspection Cycle of RIAs

Percentage Examined Each Year



SEC Annual Budgets & Inspection Cycles - 2006-2017



Congress



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Congressional Review Act – Potential Rules on the Chopping Block

- SEC
 - Fund liquidity risk (redemption) rule
 - Fund swing pricing rule
 - Form ADV changes
- DOL
 - NOT fiduciary rule BUT
 - County, muni auto IRA rule eligible



Will New Congress Repeal Dodd-Frank?



Key provisions of the Financial Choice Act of interest to advisors:

- Requires additional public comment on SEC guidance
- Repeals DOL fiduciary rule; slows SEC initiative
 - Prohibits DOL from issuing a new rule until 60 days after the SEC issues its own fiduciary rule covering brokers and advisers
 - Requires SEC to first submit a report on alternatives such as
 - Simplifying titles used by BDs and RIAs
 - Enhancing disclosure
 - Assessing whether rule adversely impacts commissions, proprietary products and principal transactions
- Revises Definition of Accredited Investor



Rep. Jeb Hensarling

Case Law Review



Key Trends

- Private university suits
- Church plan exemptions challenged
- Company stock in plans
- Proprietary funds in financial firms' plans
- Most common claim overall is excessive fees

Practical Realities – Tough to Turn Back



- Most firms are already on the path to compliance
- Many firms see opportunity in fiduciary branding
- Consumer awareness of “fiduciary” is growing
- Fiduciary business model has been winning in the marketplace for advisor talent
- Professionalism pays
- Fiduciary is the “natural order”



Questions?

Some additional resources:

- All about the DOL Fiduciary Rule – <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2>
- All about fi360, including Prudent Investment Practices: www.fi360.com

Additional information on fiduciary trends can be found at

fi360 Fiduciary Talk Podcast

www.fi360.com/fiduciarytalk

Also available on iTunes

and

fi360 Blog

www.fi360.com/blog