

Legislation Misses Mark in Attempt to Expand SEC Disgorgement Powers

West LegalEdcenter

05.12.2021

When:

12:00 p.m. -1:00 p.m. E.T.

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About:

On January 1, 2021, the United States Congress rang in the new year by passing the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. Buried in the massive spending bill is Section 6501, a provision authorizing the United States Securities and Exchange Commission ("SEC") to seek disgorgement of unjust enrichment within 10 years for certain securities law violations, and 5 years for others. Congress passed this legislation in apparent response to a pair of United States Supreme Court decisions that limited disgorgement in SEC enforcement actions to a 5-year statute of limitations and required that the remedy not exceed a wrongdoer's net profits and be awarded for the benefit of victims. While Congress may have intended for Section 6501 to free the SEC from the limits imposed by these two High Court decisions, a close reading of the statute's text reveals that the legislation may have missed its mark. As such, the new law leaves defendants in enforcement actions free to argue that Congress has not actually restored any of the agency's lost powers, and potentially subjecting the SEC to continued litigation over disgorgement absent an additional legislative fix. This presentation will address the pre-2021 precedent, the structure of the new legislation and how it might be subject to unexpected interpretation, and address the effectiveness, or lack thereof, of Congress' latest effort to overrule Supreme Court precedent.

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