Insight

Proposed Legislative Alternatives to DOL's Fiduciary Rule

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Last week the Department of Labor (DOL) sent its final version of the long-awaited and much-debated fiduciary rule to the Office of Management and Budget (OMB) for approval. In the meantime, the House Education and Workforce Committee approved two bills that offer alternative fiduciary standards and would require DOL to receive congressional approval before implementing its fiduciary rule.

The first, introduced by Rep. Peter Roskam, would amend the Internal Revenue Code to subject investment advisers to liability for providing advice impermissible under the prohibited transaction provisions or for breaching the best interest standard for advice to their clients. The second, introduced by Rep. Phil Roe, is almost identical in language to Rep. Roskam's bill, but instead amends the Employee Retirement Income Security Act (ERISA), which is the same law that DOL is using as the vehicle for its fiduciary rule.

Instead of the clunky, costly, and generally unworkable proposals by DOL, these bills strike a balance by stipulating a best interest standard (which has been supported by both sides through the rulemaking process) while eliminating most parts of the DOL rule that would put a lot of investment advisers out of business and significantly reduce the availability of advice – especially to low and middle class retirement savers.

Research by AAF has shown that DOL's fiduciary rule, if implemented as written, would increase costs to retail investors by anywhere from 73 to 196 percent as a result of a mass shift toward fee based accounts. Not only that, but firms that provide investment advice would see an average of $21.5 million in initial compliance costs along with $5.1 million in maintenance costs annually. Maybe the most concerning is that up to 7 million current Individual Retirement Accounts (IRAs) would fail to qualify for an advisory account due to the balance being too low to be profitable for the adviser.

Unfortunately, as politics tend to go, even these extreme consequences are being overlooked in pursuit of the administration's regulatory objectives. Even if these bills are passed, the chances that the president would sign them into law and risk his fiduciary rule falling to the wayside are slim to none. Luckily for the president, he doesn't have to worry about his retirement saving advice being too expensive or too hard to come by; millions of Americans, however, don't have that same luxury.